United States Court of Appeals

for the Second Circuit

APPENDIX

76-7578

B

In The

United States Court of Appeals

For The Second Circuit

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, E.T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI,

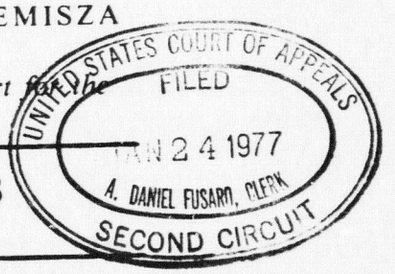
Plaintiffs-Appellees,

vs.

THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA

(Continued on Reverse)

On Appeal from the United States District Court for the Southern District of New York.



APPENDIX FOR APPELLANTS

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HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERALD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H.H. THYSSEN-BORNEMISZA, R.L. GENILLARD and CHEMICAL BANK,

Defendants-Appellees.

WILLIAM B. WEINBERGER,

Plaintiff-Appellee,

vs.

RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD INC.,

Defendants-Appellees.

SHAMROCK CORPORATION, individually, and on behalf of all holders of Common Stock and Warrants of Indian Head Inc., similarly situated,

Plaintiffs-Appellees,

vs.

INDIAN HEAD INC.; THYSSEN-BORNEMISZA GROUP N.V.; THYSSEN-BORNEMISZA, INC.; WHITE, WELD & CO. INCORPORATED; RICHARD J. POWERS; JAMES E. ROBISON; HERBERT E. BACHRACH; GERALD B. HUISKAMP; L. EMERY KATZENBACH; MARSHALL F. SMITH; H.H. THYSSEN-BORNEMISZA; R.L. GENILLARD; THYSSEN-BORNEMISZA HOLDINGS, INC. and CHEMICAL BANK,

Defendants-Appellees.

APPEAL OF MORTON P. ROME AND MARJORIE T. ROME, TRUSTEES UNDER TRUST AGREEMENT MADE NOVEMBER 22, 1954, FOR THE BENEFIT OF SALLY P. ROME,

Objectors-Appellants.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER et al., Plaintiffs, —against— THYSSEN-BORNEMISZA EUROPE N.V. et al., Defendants.	74 Civ. 5755 (CES)
WILLIAM B. WEINBERGER, Plaintiff, —against— RICHARD J. POWERS et al., Defendants.	75 Civ. 229 (CES)
SHAMROCK CORPORATION et al., Plaintiffs, —against— INDIAN HEAD INC. et al., Defendants.	75 Civ. 1736 (CES)

NOTICE OF INDIAN HEAD INC. CLASS ACTIONS, PROPOSED SETTLEMENT AND HEARING

TO: *All Present Owners of Indian Head Common Stock, Convertible Debentures and Warrants*

All Owners of Indian Head Debentures on September 27, 1973 Who Sold Them Thereafter

All Owners of Indian Head Debentures on July 2, 1974 Who Sold Them Thereafter

All Owners of Indian Head Warrants on July 2, 1974 Who Continue to Own Them

All Owners of Indian Head Warrants on July 2, 1974 Who Sold Them Thereafter

All Owners of Indian Head Warrants Who Sold Them Between August 1, 1973 and July 1, 1974.

A PROPOSED SETTLEMENT HAS BEEN REACHED IN THE ABOVE-CAPTIONED ACTIONS. THIS NOTICE SETS OUT THE PROCEDURE BY WHICH ALL PRESENT OWNERS OF INDIAN HEAD INC. COMMON STOCK, CONVERTIBLE DEBENTURES OR WARRANTS, AND CERTAIN FORMER OWNERS OF INDIAN HEAD COVERTIBLE DEBENTURES OR WARRANTS, MAY SHARE IN THE SETTLEMENT PROCEEDS IF THE PROPOSED SETTLEMENT IS APPROVED BY THE COURT.

1. PLEASE TAKE NOTICE THAT, pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an order of the United States District Court for the Southern District of New York, dated August 2, 1976:

A. *Settlement Hearing.* A hearing will be held in the above-captioned actions in Room 2703, United States Courthouse, Foley Square, New York, New York, at 4 P.M. on October 13, 1976 ("Settlement Hearing") on an application by the parties to these actions (i) to determine the fairness, reasonableness and adequacy of the proposed settlement and whether these actions should be dismissed on the merits and with prejudice as to all defendants, and (ii) if the proposed settlement be approved, to schedule a hearing to determine allowable fees, disbursements and expenses, as hereinafter more particularly described. The Settlement Hearing may be adjourned by the Court without further notice other than an announcement in court on the above date.

B. *Class Certification.* The above-captioned actions have been ordered to be maintained as class actions for purposes of this settlement on behalf of *all Owners, beneficially or of record, of the following Indian Head securities, during the periods specified*:

COMMON STOCK CLASS. *All Owners of Indian Head Common Stock on August 2, 1976 who have continuously owned such shares to and including the date of the proposed merger of Indian Head into Thyssen-Bornemisza Holdings, Inc. which will take place if the proposed settlement is approved (the "*MERGER DATE*").*

DEBENTURE OWNER CLASS. *All Owners of Indian Head 5½% Convertible Subordinated Debentures due April 15, 1993 ("Debentures") on August 2, 1976 who have continuously owned them to and including the* MERGER DATE.

DEBENTURE SELLER CLASS A. *All Owners of Debentures on September 27, 1973 who sold such Debentures between September 27, 1973 and July 1, 1974.*

DEBENTURE SELLER CLASS B. *All Owners of Debentures on July 2, 1974 who sold such Debentures between July 12, 1974 and August 2, 1976.*

WARRANT OWNER CLASS A. *All Owners of Indian Head Warrants issued pursuant to the Warrant Agreement dated as of May 15, 1965 between Indian Head and Chemical Bank ("Warrants") on August 2, 1976 who have continuously owned them to and including the* MERGER DATE.

WARRANT OWNER CLASS B. *All Owners of Warrants on July 2, 1974 who have held them continuously to and including the* MERGER DATE.

WARRANT SELLER CLASS A. *All Owners of Warrants on July 2, 1974 who sold such Warrants between July 12, 1974 and August 2, 1976.*

WARRANT SELLER CLASS B. *All Owners of Warrants who sold such Warrants between August 1, 1973 and July 1, 1974.*

WHAT YOU WILL RECEIVE UNDER THE PROPOSED SETTLEMENT AND HOW TO OBTAIN IT

Proposed Cash Settlement Payments.

2. Under the proposed settlement, class members who accept the settlement and who comply with the procedures summarized below will receive the following cash payments:

COMMON STOCK CLASS [585,547 shares publicly outstanding]—*$32 per share:*

To be paid upon the Merger and submission of your Stock Certificates together with a properly filled out Transmittal Letter which will be sent to owners of record upon the Merger.

DEBENTURE OWNER CLASS [14,293 Debentures (face value $1,000) outstanding]—*$844.16 for each Debenture:*

To be paid after the Merger and upon submission of your Debenture Certificates together with a properly filled out Transmittal Letter, which will be sent to owners of record upon the Merger, together with any required documentation.

DEBENTURE SELLER CLASS A—If you can establish that you sold any Debentures for *less than $650:*

You will be entitled to be paid the difference between $650 and your sales price (before deducting expenses of sale), *but no more than $50 per Debenture,* provided that you fill out the enclosed green Proof of Claim; attach to the Proof of Claim brokerage confirmations, monthly statements or other written proof of ownership and sales price and mail or file it as provided in Paragraph 17 below. Any objection by defendants to your Proof of Claim will be submitted to the Court for final determination. After the Merger, you will receive payment up to $50 per Debenture, provided the Court has not sustained any objection which may have been made to your Proof of Claim.

DEBENTURE SELLER CLASS B—If you can establish that you sold any Debentures for *less than $701:*

You will be entitled to be paid the difference between $701 and your sales price (before deducting expenses of sale), *but no more than $100 per Debenture,* provided that you fill out the enclosed yellow Proof of Claim, attach to the Proof of Claim brokerage confirmations, monthly statements or other written proof of ownership and sales price and mail or file it as provided in Paragraph 17 below. Any objection by defendants to your Proof of Claim will be submitted to the Court for final determination. After the Merger, you will receive the payment of up to $100 per Debenture, provided the Court has not sustained any objection which may have been made to your Proof of Claim.

WARRANT OWNER CLASS A [349,467 Warrants publicly outstanding]—*$2.50 per Warrant:*

To be paid after the Merger and upon submission of your Warrant Certificates together with a properly filled out Transmittal Letter, which will be sent to owners of record upon the Merger, together with any required documentation.

WARRANT OWNER CLASS B—*$4 per Warrant:*

To be paid after the Merger and upon submission of your Warrant Certificates together with a properly filled out Transmittal Letter which will be sent to owners of record, upon the Merger, together with any required documentation.

WARRANT SELLER CLASS A—*$1.50 per Warrant:*

To be paid after the Merger, provided that you fill out the enclosed blue Proof of Claim, attach to the Proof of Claim brokerage confirmations, monthly statements or other written proof of ownership and sale and mail or file it as provided in Paragraph 17 below. Any objection by defendants to your Proof of Claim will be submitted to the Court for final determination. After the merger, you will receive the payment of $1.50 per Warrant, provided the Court has not sustained any objections which may have been made to your Proof of Claim.

WARRANT SELLER CLASS B:

The Settlement makes no provision for payment to members of this Class because plaintiffs' counsel are of the opinion that members of this class can neither establish liability of the defendants, nor damages. The affidavit of plaintiffs' counsel dated July 20, 1976, on file in the Court and available for inspection, gives a more detailed explanation. Members of this Class will be bound by the proposed settlement, and thus receive no payment thereunder, unless they elect to be excluded as hereinafter provided.

Effect of Accepting Settlement.

3. By submitting a Proof of Claim or Transmittal Letter as described above, you will submit your claims to the jurisdiction of the Court and release the defendants from all claims which were or could have been asserted in these actions. If you are a class member and neither exclude yourself from the settlement in the manner prescribed below nor file a timely and proper Proof of Claim or Transmittal Letter as provided herein, you will be forever barred from recovery from the defendants with respect to all claims which are or could have been asserted in these actions.

Proposed Merger.

4. Upon entry of a Judgment and Order of the Court approving this settlement upon the terms and conditions of the Settlement Agreement, THYSSEN-BORNEMISZA, INC. ("TBI") shall cause INDIAN HEAD to be merged into THYSSEN-BORNEMISZA HOLDINGS, INC., a subsidiary which will be formed by TBI, pursuant to §253 of the Delaware Corporation Law (the "MERGER"), paying thereafter $32 for each share of Common Stock of INDIAN HEAD issued and outstanding on the MERGER DATE to holders of Common Stock.

Escrow Payments.

5. After the MERGER DATE, TBI will pay $12,100,000 into a Debenture Settlement Fund to be administered by MARINE MIDLAND BANK and pay $1,450,000 into a Warrant Settlement Fund to be administered by CHEMICAL BANK, and will make such additional payments to such Funds as are necessary to effectuate the terms of the proposed settlement. The Debenture and Warrant class members will be paid by MARINE MIDLAND BANK and CHEMICAL BANK, respectively, the sums to which they are entitled from such Settlement Funds as promptly as practicable after the approval of the settlement and receipt of Proofs of Claim and Transmittal Letters.

Settlement Agreement and Court Papers.

6. The full and complete terms of the proposed settlement are contained in a Stipulation and Agreement of Settlement, as amended ("Settlement Agreement"). The Settlement Agreement, together with the pleadings and all other papers, including the Order of the Court certifying these actions as Class Actions and directing the Settlement Hearing herein described, are on file with the Clerk of the United States District Court for the Southern District of New York, Foley Square, New York, New York, and are available for inspection at any time from 9:30 A.M. to 5:00 P.M., Monday through Friday, holidays excepted, at the Office of the Clerk. Any questions you may have with respect to this Notice and the Settlement Agreement should be raised with your attorney or advisor, or directed to lead counsel for plaintiffs, WILLIAM KLEIN II, ESQ., AUSTRIAN, LANCE & STEWART, P.C., 630 Fifth Avenue, New York, New York 10020 (Tel. No. [212] 489-9500), and not with the Court. In order to determine the tax consequences, if any, of the money received pursuant to the settlement, you should consider consulting your own accountant or attorney.

Attorney Fees.

7. If the proposed settlement is approved by the Court, applications will be made by AUSTRIAN, LANCE & STEWART, P.C., lead counsel, WEINSTEIN & LEVINSON, co-counsel for the Debenture Owner Class and Debenture Seller Classes, and WOLF, HALDENSTEIN, ADLER, FREEMAN, HERZ & FRANK, co-counsel for the Warrant Owner and Warrant Seller Classes, for their fees and expenses. TBI has agreed to pay the reasonable fees and expenses of counsel for plaintiffs in the above-captioned actions in such amounts as are awarded by the Court, but not more than an aggregate amount of $600,000.

The Settlement Hearing.

8. If you are satisfied with the proposed settlement, you need not appear at the Settlement Hearing, and your interests will be represented by plaintiffs' counsel. Any person who establishes membership in any class described herein may appear at the Settlement Hearing and show cause, if such member has any, why the proposed settlement should not be approved and the action dismissed. No person shall be heard at the Settlement Hearing unless notice of intention to appear and grounds for objection in writing, together with any supporting papers and briefs which such class member may choose to submit, are filed with the Court on or before September 28, 1976, showing due proof of service on both of the following:

Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020
Lead Counsel for All Classes

Shearman & Sterling
53 Wall Street
New York, New York 10005
Attorneys for Certain Defendants

Any class member who does not make objection in the manner provided herein shall be deemed to have waived such objection and shall be forever foreclosed from making any objection (by appeal or otherwise) to the proposed settlement. The filing of an objection shall not extend the time within which a class member may file an acceptable Proof of Claim or request exclusion from a class nor exclude the objector from any judgment entered in these actions.

DESCRIPTION OF THE LITIGATION

Original Brucker Complaint.

9. On December 31, 1974 the Brucker plaintiffs on behalf of themselves and other owners of Indian Head Convertible Debentures commenced an action against a number of defendants, including INDIAN HEAD, THYSSEN-BORNEMISZA EUROPE N.V. ("TBE"), TBI and certain officers and directors of those companies. This original Brucker Complaint alleged that no notice was sent to the Debenture owners of the Tender Offers made by TBE on September 27, 1973 and July 12, 1974, as a result of which TBI acquired 90.6% of Indian Head Common Stock; the Debentures and Common Stock were delisted from the New York Stock Exchange; the Debenture owners were thereby deprived of the opportunity to convert into Common Stock and receive $701 for each $1,000 Debenture; and after TBE acquired control and the Debentures and Common Stock were delisted, the market price for the Debentures had fallen below $500. (The above-entitled *Weinberger* action, commenced in January 197 made similar complaints on behalf of Debenture owners, and the above-entitled *Shamrock* action, commenced in April, 1975 on behalf of Indian Head Warrant owners, alleged that the terms of the Tender Offers were unfair.)

Brucker Amended Complaint.

10. On February 20, 1976 the Brucker plaintiffs filed an Amended Complaint on behalf of all Indian Head Common Stock and Warrant owners, as well as Debenture owners, alleging that TBE had proposed on February 12, 1976 to merge Indian Head into a TBE subsidiary, on unfair and unlawful terms: $779 for the Debentures, which were then redeemable at $1,033; $30 for the Common Stock; and the Warrants, which were exercisable at the same $30 price as was being offered the Common Stock, would receive nothing. It further alleged that the merger was a redemption of the Debentures at $1,033; the failure to notify the Debenture owners of the tenders created a default causing the $1,000 principal to be due and payable; the merger had no business purpose; and TBE had used its majority control of Indian Head to dictate unfair prices to the members of all classes. (An Amended Complaint filed in the *Shamrock* action on March 4, 1976, made similar allegations on behalf of Warrant holders and Common Stock holders.) A preliminary injunction was requested to stop the merger, and on the return date of the preliminary injunction hearing the proposed merger was withdrawn ("Withdrawn Merger Proposal").

Second Amended Complaint.

11. On July 20, 1976, the Brucker plaintiffs filed, in connection with the proposed settlement, a Second Amended Complaint which embodied the facts, circumstances and allegations contained in the various proceedings since the litigation commenced. The plaintiffs include two Warrant holders owning an aggregate of 9,100 Warrants, and an owner of 32 shares of Common Stock. In addition to the allegations in the prior complaints, it was alleged that both tender offers were made in violation of the rights of Warrant owners.

Defendants' Denial of Liability.

12. The defendants, while denying all liability on the charges made in the actions, maintaining their innocence of any wrongdoing, and relying upon the stipulation that the settlement shall not in any event be construed as or deemed to be evidence or an admission or concession on the part of the settling defendants or any of them, of any liability or wrongdoing whatsoever, consider it desirable that the actions be settled. Such settlement is desired to avoid further expense, to preserve and protect their business reputations, to dispose of burdensome and protracted litigation and to permit the merger of Indian Head into a subsidiary of TBI to proceed unhampered by expensive litigation and the distraction and diversion of its executive personnel; and they have accordingly agreed to the settlement on the terms stated in the Settlement Agreement.

Plaintiffs' Counsel's Recommendation of Settlement.

13. Plaintiffs, by their attorneys and experts, have made a thorough and detailed investigation of the facts, circumstances and transactions involved in this action, and have conducted an extensive investigation of the ten year-documentary record underlying the transactions involved in the above-captioned actions and of the financial, market and economic aspects thereof. After taking into account the likelihood that this litigation, if not settled now, will be protracted and extensive, involving uncertain questions of establishing liability

and difficulties in establishing damages, the risks inherent in litigation and potential time-consuming appeals, counsel for the plaintiffs have concluded that it would be in the best interests of plaintiffs and the classes to settle the actions on the terms of the proposed settlement.

In counsel's opinion (and taking into account that the Debentures and Warrants expire in 1993 and 1990, respectively), the class members will receive as much on settlement, and possibly more, than they might be awarded in damages, after trial, assuming they could obtain a judgment on liability, which plaintiffs' counsel deems questionable. Thus, the Warrant owner on July 2, 1974 who continues as an owner on the Merger Date receives $4 compared to nothing in the Withdrawn Merger Proposal and approximately $4.50 in the market prior to the July 12, 1974 tender offer. $844.16 for the Debentures compares to the $1,000 face amount, the $701 requested in the original Brucker Complaint and $420—$480 in the market after the Debentures were delisted from the New York Stock Exchange in September 1974. $32 for the Common Stock is $5 more than the tender offers and $10 more than the market price before the 1974 tender offer. The market prices on February 11, 1976, the day before the Withdrawn Merger Proposal was announced, were: Warrants: $2; Common Stock: $24; and for a $1,000 Debenture, $600.

Purpose of Notice.

14. This Notice is being sent to you in the belief that you are an owner of Common Stock of Indian Head or that you are or were an owner of Debentures or Warrants and that your rights may be affected by these actions and the proceedings described in this Notice. This Notice is not an expression of any opinion by the Court as to the merits of any claim or defense in these actions, but is solely to inform you of the pendency of the actions and of the proposed settlement described herein, so that you may decide what steps you may wish to take in relation to these actions and the proposed settlement. Former Owners of Indian Head Common Stock who tendered their shares in either of the two Tender Offers described above are not affected by nor a part of the proposed settlement and, therefore, are not being sent notice thereof.

SPECIAL NOTICE TO BROKERAGE FIRMS AND OTHER FINANCIAL INSTITUTIONS

15. All brokerage firms and other financial institutions which are or were or whose nominees are or were the record owners of Common Stock, Debentures or Warrants are directed, by Order of the Court, to transmit any Notices received to all persons who by their records are shown to be beneficial owners or former owners of Common Stock, Debentures or Warrants who are members of any class designated herein and any Proofs of Claim received to all such former beneficial owners who are members of the Debenture Seller Classes or Warrant Seller Class A, are further directed to request from the Clerk of the United States District Court for the Southern District of New York, P.O. Box 1046, New York, New York 10005, such additional Notices and Proofs of Claim as are necessary to comply with the Court's Order, and shall be reimbursed by TBI, upon written request, for the reasonable and necessary expenses of complying with the Court's Order described in this paragraph.

Settlement Conditions.

16. This proposed settlement is subject to and will not become effective until final approval by the District Court. TBI has the option to terminate the Settlement Agreement if:

(a) Requests for exclusion from the settlement (see below) are returned by persons who, had they been members of the Common Stock Class and had not elected to be excluded therefrom, would have been entitled by reason of their Common Stock Class membership to more than $500,000 in aggregate amount under the terms of the Settlement Agreement or the Merger; or

(b) A judgment and order of the Court approving this proposed settlement upon the terms and conditions of the Settlement Agreement, including the Merger, is not entered within thirty (30) days following the conclusion of the Settlement Hearing; or

(c) The Merger is stayed or enjoined or cannot be effected for any reason.

PROOF OF CLAIM BY SELLERS OF DEBENTURES OR WARRANTS

Filing of Claims.

17. A green, yellow or blue Proof of Claim is enclosed to those who are believed to be members of Debenture Seller Classes A or B or Warrant Seller Class A. The green Proof of Claim is to be promptly filled out by members of Debenture Seller Class A; the yellow Proof of Claim by Debenture Seller Class B; and the blue Proof of Claim by Warrant Seller Class A. Each such Proof of Claim must be mailed either to the address designated therein or filed with the Court no later than November 24, 1976. A stamped return envelope is enclosed so that you can insert in it the Proof of Claim, accompanied by written evidence of your purchases and sales. Any class member who fails to mail a valid and timely request for exclusion and who fails to submit a Proof of Claim by such date shall be precluded from sharing in the distribution of the Settlement Funds, but will in all other respects be subject to the provisions of the Settlement Agreement and any judgment or orders entered pursuant thereto. A Proof of Claim shall be deemed submitted when posted if it has been properly filled out and signed, a postmark is indicated on the envelope, and it is mailed postage prepaid, addressed in accordance with the instructions given therein. (To be sure of a proper postmark, you should take the envelope to a Post Office window for hand stamping with a date).

Review of Claims.

18. Proofs of Claim and Transmittal Letters submitted by members of the various Debenture classes will be reviewed by Marine Midland Bank, and those submitted by members of the various Warrant classes will be reviewed by Chemical Bank. Any questions concerning the payment or nonpayment of any Proofs of Claim or Transmittal Letters will be referred to Austrian, Lance & Stewart, P.C., lead counsel for the classes, and Shearman & Sterling, counsel for certain defendants. Any questions unresolved by such counsel will be submitted to the Court for final determination. Payment to any class member who participates in an appeal of a judgment approving the proposed settlement will be withheld until the determination of such appeal.

Payment of Expenses.

19. TBI shall pay all costs and expenses incurred in connection with the administration and distribution of the respective Settlement Funds and processing Proofs of Claim and Transmittal Letters and all costs and expenses incurred in the mailing and publication of this Notice, Proofs of Claim and Transmittal Letters.

CONSIDERATIONS AFFECTING RIGHTS OF SECURITY HOLDERS

Common Stock Owners.

20. After the Merger Date each holder of Common Stock, whether or not a member of the Common Stock Class, will be entitled pursuant to the Merger to a cash payment of $32 per share in cancellation of each share of such Common Stock. Each owner of record of Common Stock on the Merger Date will have appraisal rights under the laws of the State of Delaware, so that such owner who elects not to accept $32 per share pursuant to the Merger may seek appraisal of the value of the Common Stock owned.

Debenture Owners.

21. A member of the Debenture Owner Class *is not required to submit* the Debenture(s) and accept the $844.16 payment for each Debenture owned. Such member is entitled to hold the Debenture(s) and receive periodic interest payments when due and principal payments at maturity. However, upon consummation of the Merger contemplated by the Settlement Agreement, an owner of Debentures will no longer have the right to convert such Debentures into Common Stock, but will be entitled only to receive a cash payment of $831.17 upon surrender for conversion of each Debenture. Interest in the amount of $27.50 per $1,000 principal amount of Debentures is payable on October 15, 1976 to holders of record on September 30, 1976. Any owner of Debentures who desires to convert such Debentures into Common Stock prior to the Merger in order to exercise the right of appraisal under Delaware law should discuss the advisability of such action with the owner's legal and financial advisors. A conversion of the Debentures into Common Stock will result in the exclusion of the Debenture Owner from the Debenture Owner Class, thereby rendering the owner ineligible to receive the benefits of the Settlement Agreement.

Warrant Owners.

22. A member of Warrant Owner Classes A or B *is not required to submit* the Warrants and accept the $2.50 or $4 payments provided by the Settlement Agreement. However, upon consummation of the Merger contemplated by the Settlement Agreement, an owner of Warrants will no longer have the right to exercise the Warrants for the purchase of Common Stock, but will be entitled only to receive a cash payment of $32 upon surrender of each Warrant and the payment to Indian Head of the then exercise price (currently $30 per Warrant). In addition, any owner of Warrants who desires to exercise the Warrants to purchase Common Stock prior to the Merger in order to exercise a right of appraisal under Delaware law should discuss the advisability of such action with the owner's legal and financial advisors. Such exercise of the right to purchase Common Stock will result in the exclusion of the Warrant Owner from any Warrant Owner Class, thereby rendering the owner ineligible to receive the benefits of the Settlement Agreement.

ELECTION TO BE EXCLUDED FROM CLASS ACTION

Written Request.

23. Any class member may elect to be excluded from a class by mailing to the Clerk, United States District Court, Southern District of New York, P.O. Box 1046, New York, N.Y. 10005, written request for exclusion on or before September 28, 1976. Any class member requesting exclusion from the proposed settlement must state in writing:

(a) The member's name, address and telephone number;

(b) The number of shares of Common Stock, principal amount of Debentures and number of Warrants the member purchased and sold; and

(c) The number of shares of Common Stock, principal amount of Debentures and number of Warrants the member continues to own.

Consequences of Exclusion.

24. A class member making a request for exclusion will not share in the benefits of the settlement, will not be bound by any judgment entered in the above-captioned actions, and will only be able to pursue the member's individual claim, if any. Failure to submit a request for exclusion by September 28, 1976 will result in a class member being bound by the terms of any judgment or order in the above-captioned actions, including a judgment and order approving the proposed settlement.

Dated: New York, New York
August 2, 1976

By Order of the Court:
Clerk of the United States District Court
For the Southern District of New York

ENCLOSURE LETTER DATED OCTOBER 9, 1976 FROM MARTIN J. WHITMAN TO AUSTRIAN, LANCE & STEWART WITH EVALUATION REPORT (pp. 587a-609a)

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

October 9, 1976

Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020

Attention: William Klein II, Esq.

RE: Proposed Settlement of Indian Head, Inc. Class Action

Gentlemen:

We were retained by you initially in December 1974 to advise you about the economic impact of the failure to send direct notice to holders of Indian Head, Inc. 5 1/2% Convertible Subordinated Debentures due April 15, 1993 (the Convertible Debentures) of tender offers for Indian Head, Inc. Common Stock (the Common Stock) by Thyssen-Bornemisza Group NV and subsidiaries (TBG) in 1973 (The 1973 Tender Offer) and 1974 (The 1974 Tender Offer). Thereafter, as the litigation progressed, you sought our advice about various matters from time to time related to Indian Head, Inc. (Indian Head), the two Tender Offers, and the claims of various holders of the Convertible Debentures, the Common Stock and the Warrants (the Warrants). Among other things, we furnished you with preliminary letter opinions dated May 7, 1976 and July 6, 1976, a copy of each being annexed as Exhibits H-1 and H-2 to your affidavit in support of the settlement (the Settlement).

You informed us about the terms of the Settlement while the terms were being negotiated. At that time, you sought our opinion as to whether the terms, which are now described in the Notice of Settlement dated August 2, 1976 (the Notice) annexed hereto as Exhibit A, were fair, reasonable and adequate. In recent months, we have examined the Settlement in depth and are of the opinion that the Settlement is fair, reasonable and adequate for each class of security holder involved with the Settlement.

In arriving at our opinion, we considered all factors we deemed relevant including, among others, the ... ments to be made to members of various classes for the Convertible Debe ...ures, the Common Stock and the Warrants, a comparison based on present and historic earnings, financial position, book value and dividends of Indian Head and the Common Stock at a price of 32 with the common stock issues of other companies we believe are comparable to the Common Stock; the investment value of the Convertible Debentures; theoretical versus market values for warrants; possible benefits to TBG from the proposed cash merger; Indian Head's business plans and forecasts; premiums typically offered in cash merg... s; and market price histories for the Convertible Debentures, the Common Stock, and the Warrants from the period prior to the 1973 Tender Offer to the date of the Notice.

Accompanying this letter is our Evaluation Report which reviews certain of the relevant factors. I anticipate being present at the hearing scheduled for October 13, 1976. In the interim, I am available to discuss our opinion in detail at a mutually convenient time with any of the parties involved in the Settlement with whom you think I should talk.

Sincerely yours,

M. J. WHITMAN & CO., INC.

Martin J. Whitman

Martin J. Whitman, C.F.A.
President

MJW:mh
Encl.

589a

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

EVALUATION

OF

PROPOSED SETTLEMENT

IN THE MATTER OF

EDWARD BRUCKER, ET AL

AGAINST

INDIAN HEAD, INC.; ET AL

October 9, 1976

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SUMMARY AND OPINION

In our opinion, the proposed settlement (the Settlement) is fair, reasonable and adequate to each class which is a party to the Notice of Settlement dated August 2, 1976 (the Notice).

COMMON STOCK

Holders of Indian Head, Inc. Common Stock (the Common Stock) are to receive $32 per share. The $32 per share price appears to be fair, adequate and reasonable based on relevant standards of evaluation as follows:

1) Ratio of price to current earnings when the Common Stock is compared with the common stocks of comparable issuers (the Comparables).

2) Ratio of price to three-year average earnings when the Common Stock is compared with the common stocks of the Comparables.

3) Relationship of price to book value of the Common Stock when the Common Stock is compared with the common stocks of the Comparables.

4) Financial position of Indian Head, Inc. (Indian Head or the Company) compared with the financial positions of the Comparables.

5) The outlook for Indian Head and its various operating divisions.

6) The possible benefits to Thyssen-Bornemisza Group NV and subsidiaries (TBG) if Indian Head were to become wholly-owned by TBG.

CONVERTIBLE DEBENTURES

Holders of Indian Head, Inc. 5 1/2% Convertible Subordinated Debentures due April 15, 1993 (the Convertible Debentures) are to receive $844.16 for each $1,000 face amount of the Convertible Debenture. The $844.16 price seems fair, adequate and reasonable based on relevant standards of evaluation as follows:

1) The price of $844.16 represents a premium of 1.6% over the $831.17 to which a debenture holder would be entitled if the Convertible Debentures were converted and the Common Stock received on conversion were paid $32 per share cash. As is stated above, the $32 per share price appears to be fair, adequate and reasonable.

2) The terms of the Settlement allow any debenture holder not desiring to accept $844.16 to continue as a debenture holder with all of his rights intact including the rights to receive principal and interest and the right to convert the debenture at any time into the precise consideration the Common Stock is receiving in the cash merger;

i.e., at any time, a continuing debenture holder can put the Convertible Debenture to the merged company and receive $831.17, equal to $32 per share of Common Stock.

3) The price of $844.16 is at least thirty per cent (30%) above the estimated Investment Value of the Convertible Debentures. Investment Value is an estimate of the present worth of a convertible debenture when that issue is evaluated as a straight debenture without a meaningful conversion privilege. A study of Moody's Ba rated convertible debentures leads us to conclude that if the Convertible Debentures, which are rated Ba by Moody's, did not have a meaningful conversion privilege, it would sell at a yield to maturity of not less than ten per cent (10%). At a ten per cent (10%) yield to maturity, the Convertible Debentures would be valued at $639.74.

DEBENTURE SELLER CLASS A

Debenture Seller Class A, i.e., all owners of Convertible Debentures on September 27, 1973 who sold between September 27, 1973 and July 1, 1974, are to receive the difference between $650 and their sales price, but no more than $50 per Convertible Debenture. In our opinion, this consideration appears to be fair, adequate and reasonable based on relevant standards of evaluation as follows:

The claim of this Class is for the possibility of losses because of failure to receive direct notice of a September 27, 1973 Tender Offer (the 1973 Tender Offer) under which TBG sought to acquire approximately thirty per cent (30%) of the Common Stock. During the period just before the 1973 Tender Offer, the difference between market price and the $701 that would have been received had the debenture owner converted and tendered, was rarely significant. Moreover, since the 1973 Tender Offer was for approximately thirty per cent (30%) of the Common Stock, it would have been reasonable to anticipate that only a part of the Common Stock tendered would have been accepted. Accordingly, the Settlement terms appear to adequately compensate this Class in light of the possibilities that, even if given notice, there may have been little economic incentive to convert and tender, and if Common Stock were tendered at $27 per share, only a portion would be accepted.

DEBENTURE SELLER CLASS B

Debenture Seller Class B, i.e., all owners of Convertible Debentures on July 2, 1974 who sold between July 12, 1974 and August 2, 1976, are to receive the difference between $701 and their sales price, but no more than $100 per Convertible Debenture. In our opinion, this consideration appears to be fair, adequate and reasonable based on relevant standards of evaluation as follows:

1) The claim of this Class is for the possibility of losses because of a failure to receive direct notice of an August 2, 1974 tender offer (the 1974 Tender Offer) under which

TBG sought, inter alia, to acquire all the outstanding Common Stock which TBG did not then own. During the period between November 1973 and the 1974 Tender Offer, the market prices of the Convertible Debentures were generally below $701 but rarely by as much as $100. Had direct notice been received, Class members might have converted and tendered all of their Common Stock to TBG at $27 per share, net, in cash, equal to a value of $701 per Convertible Debenture. The Settlement terms appear to us to adequately compensate for the possibility that failure to give direct notice resulted in members of the Class failing to tender.

2) The 1974 Tender Offer under which the Common Stock was paid $27 per share and which, unlike the 1973 Tender Offer, had "force-out" characteristics, was at a fair price.

WARRANTS

Warrant Owner Class B, i.e., all holders who have held Indian Head, Inc. warrants (the Warrants) continuously from July 2, 1974 through the date of the cash merger, are to receive $4 per Warrant. The $4 per Warrant price appears to be fair, adequate and reasonable based on relevant standards of evaluation as follows:

1) The present exercise price of a Warrant to buy 1 share of Common Stock is $30 per share. Under the Settlement, the value of the

Common Stock is $32 per share. The $2 difference between the exercise price and the Common Stock value is called theoretical value. Under the May 15, 1965 Warrant Agreement -- which is the contract between the Warrant holder and Indian Head -- it appears as if the Warrant is entitled to only theoretical value, i.e., $2.

2) The $4 Settlement price is a one hundred per cent (100%) premium over theoretical value. It adequately compensates warrant holders for any possibility that, after litigation, it would be determined that a Warrant holder is entitled to additional consideration above theoretical value because the cash merger terminates rights to buy Indian Head Common Stock through 1990 when the Warrants expire.

Warrant Owner Class A, i.e., warrant holders who held continuously after July 2, 1974 through the date of the cash merger, are to receive $2.50 per Warrant.

Warrant Seller Class A, i.e., warrant holders who sold Warrants between July 12, 1974 and August 2, 1976, are to receive $1.50 per Warrant. Viewed as one entity, Warrant Owner Class A and Warrant Seller Class A are to receive a total of $4 per Warrant. In our view, this is a fair and reasonable split of the $4 value between the two classes with 62 1/2% going to owners and 37 1/2% to sellers; sellers had an opportunity to tender at $2.25 in the 1974

Tender Offer and re-employ the funds received elsewhere; also, all sellers have already had some cash realization from the sale of Warrants.

Warrant Seller Class B, i.e., all sellers of Warrants before the 1974 Tender Offer, are to receive nothing. In our opinion, this is fair and reasonable based on relevant standards of evaluation as follows:

1) Insofar as the Warrants are concerned, there were no "force-out" elements in the 1973 Tender Offer. The Warrants and the Common Stock continued to be marketable and the acquisition by TBG of the 33.9% of the Indian Head Common Stock did not adversely affect the Warrants.

2) Between the 1973 and 1974 Tender Offers, the market prices for the Warrants were such before the 1974 Tender Offer that there was no possibility of loss to the Warrants because of failure to receive direct notice about the 1973 Tender Offer for a portion of the Common Stock at $27 per share. At that time, the market prices for the Warrants were above theoretical value. Thus, these sellers suffered no damage.

QUALIFICATIONS

This Evaluation Report was prepared by, or under the direct supervision of, Martin J. Whitman, C.F.A., chief executive officer of M. J. Whitman & Co.,

Inc., members of the National Association of Securities Dealers, Inc. Mr. Whitman's resume is attached hereto as Exhibit A.

M. J. Whitman & Co., Inc.'s principal activities are in financial consulting and investment banking. Corporate and business clients which have recently retained us include American Medicorp, Inc., Barbara Lynn Stores, Combined Properties, Inc., Crane Company, Elgin National Industries, Hudson Pharmaceutical Corporation, Hygrade Foods, Inc., Interstate Stores, Inc., Peat, Marwick, Mitchell & Co., Otis Elevator Company and Select Theatres. Our services have included the structuring and managing of cash tender and cash merger offers for corporate clients including American Multi-Media, Genimar, Inc. and Pill & Puff, Inc. For the past two years, Mr. Whitman has been on monthly retainer to Bankers Trust Company New York in connection with certain of that institution's corporate finance activities. For the past five years, Mr. Whitman has held the title of Lecturer at Yale University where he conducts a weekly seminar entitled, "Money and Financial Institutions." At present, at Yale University, he is a member of the faculty of the new Graduate School of Organization and Management. Mr. Whitman is also the senior author of a forthcoming book on corporate finance entitled, Investments and Finance: Myths and Realities.

SCOPE OF REVIEW

In arriving at our opinion that the Settlement is fair, adequate and

reasonable, our review encompassed five types of activities:

1) An examination of all reports and forms filed by Indian Head with the Securities and Exchange Commission since 1970, as well as Schedule 13D's filed for the 1973 Tender Offer and 1974 Tender Offer. We also reviewed all stockholder mailings by Indian Head, Inc. and, in addition, examined Company filings at the New York Stock Exchange.

2) An examination of Pleadings, Affidavits and Exhibits filed by counsel in connection with these lawsuits. In addition, Mr. Whitman has had discussions with various counsel, including a representative of the defendants, as well as counsel for certain plaintiffs besides the firm which has retained us.

3) The use of general financial literature and statistics published by Moody's Investors Service, Standard & Poor's Corporation and the Securities and Exchange Commission (SEC).

4) An examination of internal documents prepared by Indian Head including materials related to the acquisition of Peerless Pump and the latest available Indian Head Business Plan for 1976-1978 which was promulgated in December 1975.

5) An interview with Richard J. Powers, Chairman of Indian Head.

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The scope of our review did not include any independent verification of any documents or statements upon which we relied, nor did it include any plant visits or interviews with any TBG or Indian Head executives other than Mr. Powers. The Indian Head documents which we reviewed are so comprehensive and the nature and quality of the Indian Head business is such that we believe we have a more than adequate basis for arriving at our opinion.

DISCUSSION OF CERTAIN RELEVANT FACTORS

COMPARISONS

Attached hereto is Exhibit B which compares the Common Stock at $32 with the common stocks of the Comparables, six companies which, based on our experience, we deem most comparable to Indian Head. Five of the comparable companies are good grade, quasi-conglomerates, i.e., well-financed, profitable, diversified manufacturing entities, and one, Anchor-Hocking Corp., is a glass container manufacturer. In brief, Exhibit B, which is based on August 31, 1976 data, reveals the following comparisons:

	Indian Head Common Stock (A)	The Comparables
Price Earnings Ratios:		
Latest 12 Months	8.8X	5.6X to 8.3X
Latest Fiscal	10.3X	6.0X to 10.1X
Average of 3 Fiscals	11.5X	7.7X to 10.9X

(A) Indian Head data are based only on income from continuing operations. Were Indian Head data based on net income, its price earnings ratios would be materially higher.

	Indian Head Common Stock	The Comparables
% Premium (Discount) Book Value vs. Market	17.3%	17.3% Discount to 10.4% premium (3 of 6 comparables sell at discount)
% Return on Dividend	3.5%	6.2% to 4.0%
Ratio Funded Debt to Net Worth	34:66	0:100 to 39:61

NEW ACQUISITION

At November 30, 1975, Indian Head enjoyed a strong cash position of approximately $66 million because of its sale of its Specialty Textile Group in late 1975. That cash has been largely redeployed, chiefly through the cash purchase for approximately $43 million of the Peerless Pump Division of FMC Corporation. Initially, Indian Head's net income may suffer compared with historic results because of the substitution of Peerless Pump for the discontinued textile operations. Over the long term, however, we believe that the earning power of Peerless Pump will be at least as great as that of the Specialty Textile Group which it replaced.

THE FAIRNESS OF $27 TENDER OFFERS

Where a cash tender offer may result in the acquisition of all, or substantially all, of a target company's equity securities, there can be a loss of marketability. In addition, non-tendering security holders stand to lose substantial

protections when an issuer deregisters and ceases to be a filing company with the SEC. Such a tender offer has attached to it "force-out" or coercive elements, in contrast to a voluntary tender offer where only a relatively small portion of publicly held equity securities are sought. By these standards, the 1973 Tender Offer was voluntary but the 1974 Tender Offer was a "force-out."

It is our opinion that where there is a "force-out," the tender price, as a matter of equity, ought to be fair. In our opinion, the price of $27 offered in the 1974 Tender Offer was fair. This is demonstrated by Exhibit C which compares the Common Stock at $27 with the Comparables as of June 30, 1974. In brief, Exhibit C shows the following:

	Indian Head Common Stock	The Comparables
Price Earnings Ratios:		
Latest 12 Months	7.5X	4.4X to 6.5X
Latest Fiscal	7.8	5.0X to 7.1X
Average of 3 Fiscals	8.9	5.9X to 8.8X
% Premium (Discount) Book Value vs. Market	9.1%	Discount of 54.2% to Discount of 16.2%
% Return on Dividend	1.8%	8.7% to 7.2%
Ratio Funded Debt to Net Worth	42:58	1:99 to 27:63

Exhibit D compares, as of August 31, 1976, the Convertible Debentures at a price of $844.16 with 33 convertible debentures of industrial companies with maturities of 12 years or longer which are also rated Ba by Moody's. A

principal purpose of the comparison is to indicate the prices at which the Convertible Debenture might be expected to sell if the value of the Common Stock were well below 32.

As premiums above conversion parity widen, convertible debentures issues tend to sell more and more on a yield basis. Conversion parity refers to the price relationship between the convertible security and the common stock into which it is convertible. Thus, if the market price of a convertible debenture is $1,000 and the aggregate market price of the common stock into which it is convertible is likewise $1,000, then the debenture is selling at Conversion Parity. But, if the market price of the underlying common stock is $900, then, at $1,000, the convertible debenture is selling at an 11.1% premium over Conversion Parity.

Where conversion premiums exceed thirty per cent (30%) or, say, thirty-five per cent (35%), yields to maturity of in excess of ten per cent (10%) become common. At that point, such issues tend to sell at their Investment Value.

In our view, if the Settlement is not approved, there are reasonable prospects that the Common Stock would sell well below 32. Such belief is based on both the historic price of the Common Stock before TBG evidenced interest in Indian Head, as well as a comparison of the Common Stock with the common stocks of the Comparables as is contained in Exhibit B. At various yields to maturity from 8% to 11%, the values attributable to the Convertible

Debentures would be as follows:

Yields to Maturity	Value of Convertible Debenture
8.00%	$773.00
8.50	736.16
9.00	701.81
9.50	669.69
10.00	639.63
10.50	611.48
11.00	585.10

In conclusion, it is our opinion that the Settlement is fair, reasonable and adequate.

EXHIBIT A

QUALIFICATIONS

MARTIN J. WHITMAN, Chartered Financial Analyst (CFA)
115 Broadway
New York, New York 10006
212 349-7555

EDUCATION:

B.S. Magna Cum Laude - Syracuse University
M.A. (Economics) - New School for Social Research
Also Graduate Work at Princeton University, New York University, New York Institute of Finance

BUSINESS BACKGROUND:

Period	Association	Duties
1950-1956	Shearson, Hammill & Co.	Security Analyst, Buyer in Underwriting Department
1956-1958	Wm. Rosenwald	Portfolio Analyst, Involved in financial analysis of controlled companies
1958-1959	Ladenburg, Thalmann & Co.	Head of Research-Underwriting
1959-1960	Utilities & Industries Management Corp.	Head-Acquisitions Analysis Group
1960-1967	Gerstley, Sunstein & Co.	General Partner, Research and Corporate Finance
1967-1969	Blair & Co., Inc.	Vice President-Director Corporate Finance
1969-1974	Stanley Marks & Co. merged into Hamershlag, Kempner & Marks	Registered Representative Financial Consultant
1974 -	M. J. Whitman & Co., Inc.	President - Financial Consulting - Securities Brokerag

QUALIFICATIONS (continued)

OUTSIDE ACTIVITIES:

Lectures on securities and valuations in various forums, including Wharton School, American Management Association, Financial Executives Institute, N.Y.U. Law School. Since 1972, I have been a member of the Yale University faculty where I conduct a weekly seminar entitled, "Money and Financial Institutions." I was a consultant to the Securities and Exchange Commission in its 1968-1969 Disclosure Study.

I have written a number of widely distributed booklets. Better known titles include, "The Strategy of Tender Solicitations," "Shareholder Distributions," "Corporate Reality and Accounting for Investors," and "Security Analysis and Accounting." Since 1974, I have been on monthly retainer to Bankers Trust Company of New York as a financial consultant in connection with certain of the bank's corporate finance activities.

SAMPLE COURT APPEARANCES:

Case	Where
B. & O. - Reading Private Treble Damage Action	U.S. D.C. Southern District, N.Y.
Penn Central R.R. Bankruptcy Proceedings	U.S. D.C. Philadelphia, Pa.
Beck Industries Chapter X Proceedings	U.S. D.C. Southern District, N.Y.
Bubble-Up Chapter X Proceedings	U.S. D.C. Los Angeles, California
Newman vs. Stein (Dreyfus Corp.)	U.S. D.C. Southern District, N.Y.
Gerstle vs. Gamble-Skogmo	Special Master, N.Y.C.
Feit vs. Leasco	U.S. D.C. Eastern District, N.Y.
Kohn vs. American Metal Climax	U.S. D.C. Philadelphia, Pa.
Reeder vs. Mastercraft	U.S. D.C. Southern District, N.Y.
Bragalini vs. Biblowitz	U.S. D.C. Southern District, N.Y.

SAMPLE OF CORPORATE AND BUSINESS CLIENTS:

Barbara Lynn Stores, Inc.
Crane Company
Datron Systems, Inc.
DPF, Inc.
General Host Corporation
Interstate Stores, Inc.
Owens-Illinois, Inc.
Peat, Marwick, Mitchell & Co.
Select Theatres Corp.

EXHIBIT B

COMPARISON OF INDIAN HEAD, INC. COMMON STOCK WITH COMMON STOCKS OF 6 HIGHER QUALITY CONGLOMERATES OR GLASS CONTAINER ISSUERS AS OF 8/31/76

	Indian Head	Amsted Industries	Anchor Hocking Corp.	Eltra Corp.	Harsco	Midland Ross	Stewart Warner
Recent Price	32	45	30	29	22	24	32
Where Traded	Merger Price	NYSE	NYSE	NYSE	NYSE	NYSE	NYSE
Fiscal Year Ends	11/30	9/30	12/31	9/30	12/31	12/31	12/31
No. Common Shs. Outstanding (000)	6,135	5,354	6,742	11,396	9,399	5,757	4,139
Market Value of Common (000)	196,320	240,930	202,260	327,584	206,778	138,168	132,448
Sales Volume (000)	413,411	498,688	493,564	766,591	521,558	410,088	241,184
Earnings Per Share:							
Latest 12 Months	3.63 (A)	6.58	4.47	3.49	3.90	3.63	4.05
Latest Fiscal	3.12 (A)	6.46	3.20	3.24	3.67	3.53	3.18
Average of 3 Fiscals	2.79 (A)	4.12	2.75	3.07	2.84	3.03	3.36
Book Value Latest Fiscal	27.29	66.91	28.67	26.33	23.53	29.03	28.99
Long Term Funded Debt (000)	84,600	None	34,900	54,700	80,200	54,800	2,110
Dividend	1.12	2.00	1.30	1.16	1.30	1.40	1.96
P.E. Ratios:							
Latest 12 Months	8.8X	6.8X	6.7X	8.3X	5.6X	6.6X	7.9X
Latest Fiscal	10.3	7.0	9.4	9.0	6.0	6.8	10.1
Average of 3 Fiscals	11.5	10.9	10.9	9.5	7.7	7.9	9.5
% Premium (Discount) Book Value vs. Market	17.3%	(32.7%)	4.6%	10.1%	(6.5%)	(17.3%)	10.4%
Ratio Funded Debt to Net Worth	34:66	0:100	15:85	16:84	39:61	24:76	1:99
Sales Per $ Market Value	$2.11	$2.07	$2.44	$2.34	$2.52	$2.97	$1.82
% Return on Dividend	3.5%	4.4%	4.3%	4.0%	5.9%	5.8%	6.2%

(A) Income from continuing operations only. Based on net income, earnings per share latest fiscal would be $.70 per share and average of 3 fiscals would be $2.45 per share.

EXHIBIT C

COMPARISON OF INDIAN HEAD, INC. COMMON STOCK WITH COMMON STOCKS OF 6 HIGHER QUALITY CONGLOMERATES OR GLASS CONTAINER ISSUERS AS OF 6/30/74

	Indian Head	Amsted Industries	Anchor Hocking Corp.	Eltra Corp.	Harsco	Midland Ross	Stewart Warner
Recent Price	27	39	15	22	13	11	26
Where Traded	Tender Price	NYSE	NYSE	NYSE	NYSE	NYSE	NYSE
Fiscal Year Ends	11/30	9/30	12/31	9/30	12/31	12/31	12/31
No. Common Shs. Outstanding (000)	5,795	2,672	6,902	7,523	8,360	5,650	4,125
Market Value of Common (000)	156,465	104,208	103,530	165,506	108,680	62,150	90,750
Sales Volume (000)	551,346	372,321	367,074	669,756	401,609	343,977	244,250
Earnings Per Share:							
Latest 12 Months	$3.61	$6.07	$2.60	$4.34	$2.63	$2.52	$3.36
Latest Fiscal	$3.47	$5.50	$2.66	$4.26	$2.59	$2.07	$3.50
Average of 3 Fiscals	$3.05	$4.44	$2.78	$3.39	$2.19	$1.50	$2.93
Book Value (Latest Fiscal)	24.74	53.49	24.62	33.05	19.62	24.03	26.26
Long Term Funded Debt (000)	102,360	8,500	18,900	49,300	32,700	56,200	1,400
Dividend	0.48	2.00	1.06	1.50	1.00	0.80	1.92
P/E Ratios:							
Latest 12 Months	7.5X	6.4X	5.8X	5.1X	4.6X	4.4X	6.5X
Latest Fiscal	7.8	7.1	5.6	5.2	5.0	5.3	6.3
Average of 3 Fiscals	8.9	8.8	5.4	6.5	5.9	7.3	7.5
% Premium (Discount) Book Value vs. Market	9.1%	(27.1%)	(39.1%)	(33.4%)	(33.7%)	(54.2%)	(16.2%)
Ratio Funded Debt to Net Worth	42:58	6:94	10:90	17:83	17:83	27:63	1:99
Sales Per $ Market Value	$3.52	$3.57	$3.55	$4.04	$3.70	$5.53	$2.69
% Return on Dividend	1.8%	7.2%	7.2%	6.8%	7.7%	7.3%	8.7%

EXHIBIT D

RANDOM SAMPLE
OF
CONVERTIBLE DEBENTURES
INDUSTRIAL COMPANIES - MOODY'S RATED Ba - MATURITY 12 YEARS OR LONGER

Issue	Amount Outstanding (000,000)	Convertible Into # Shs.	Common Price	Conversion Parity (4) x (5)	Debenture Price	% Premium Over Conversion Parity	% Current Yield	% Yield to Maturity	Com. Div.	% Return on Common
Indian Head CSD 5 1/2/93	$14.3	25.97	32	83.104	84.416 (A)	1.6%	6.52%	7.11%	$0.67	2.09%
Alexander's Inc., CSD 5 1/2/96	19.0	31.00	6 1/8	18.99	51	168.6	10.78	12.11	0.30	4.90
American Air Filter CSD 6/90	12.0	37.74	15	56.61	83 1/4	47.1	7.21	8.05	0.48	3.20
American Airlines CSD 4 1/4/92	167.0	22.60	14	31.64	52	64.3	8.17	10.53	None	None
American Hoist CSD 4 3/4/92	3.41	63.86	14 3/4	94.19	100	6.2	4.75	4.75	0.80	5.42
American Hoist CSD 5 1/2/93	18.0	47.92	14 3/4	70.68	84 1/4	19.2	6.53	7.12	0.80	5.42
AMFAC, Inc. CSD 5 1/4/94	35.0	22.90	14 7/8	34.06	61 3/4	81.3	8.50	9.85	1.00	6.72
AMFAC, Inc. CSD 5/89	15.0	28.00	14 7/8	41.65	62	48.9	8.06	10.52	1.00	6.72
ARA Services CSD 4 5/8/96	40.0	9.867	53 3/8	52.67	71 1/2	35.8	6.47	7.39	1.20	2.24
Beaunit Corp. SF Deb 4 1/4/90	25.0	39.02	14 1/4	55.60	74	33.0	5.74	7.23	1.10	7.72
Beech Aircraft CSD 4 3/4/93	30.0	34.21	19 1/2	66.71	76	13.9	6.25	7.22	0.80	4.10
Belco Pete. CSD 4 3/8/88	24.6	19.37	17 7/8	34.62	61	76.2	7.79	10.50	0.60	3.36
Belden Corp. CSD 8/90	15.5	40.00	22 3/4	91.00	104	14.3	7.69	7.54	1.32	5.80
Budd Co. CSD 5 7/8/94	30.0	45.45	18 1/2	84.08	87	3.5	6.75	7.18	0.80	4.32
Castle & Cook CSD 5 3/8/94	30.0	38.75	15 1/4	59.09	77	30.3	6.98	7.80	0.80	5.34
Ceco Corp. CSD 4 3/4/88	15.0	26.66	15 3/8	40.99	66	61.0	7.20	9.53	1.15	7.48
Celanese Corp. SCD 4/90	64.0	10.47	49 5/8	51.96	67 3/8	29.7	5.94	7.96	2.80	5.64
Cessna Aircraft CSD 3 7/8/92	14.0	38.91	28 3/4	111.87	107	(4.3)	3.62	3.31	1.00	3.48
Circle K Corp. CSD 4 1/2/97	10.0	22.99	7 1/4	16.67	51 1/2	208.9	8.74	10.11	0.42	5.79
Commonwealth Oil Refining CSD 4 1/4/92	17.7	40.13	11 1/8	44.65	53 3/4	20.4	7.91	10.18	None	None
Consolidated Leasing AM CSD 6/94	9.18	48.78	4 1/2	21.95	58	164.2	10.34	11.66	0.24	5.33
Cont. Air Lines CSD 3 1/2/92	34.6	31.41	8 1/8	25.52	46 1/8	80.7	7.59	10.61	None	None
Control Data CSD 3 3/4/89	8.2	12.61	22 3/4	28.69	48	67.3	7.81	11.81	None	None
Crane Co. CSD 5/93	3.8	80.00	27 3/4	222	250	11.3	2.00	-	1.20	4.32
Crane Co. CSD 5B/94	12.5	69.59	27 3/4	193.11	189	(2.1)	2.65	-	1.20	4.32
Dayco Co. Cv. Sr. SF 6 1/4/96	19.8	48.15	16 3/8	78.85	85 7/8	8.9	7.28	7.65	0.50	3.05
Del Monte Corp. CSD 5 1/4/94	30.0	25.64	23 3/8	69.93	84	20.1	6.25	6.83	1.40	5.99
Eckerd (Jack) CSD 4 3/4/88	5.28	80.13	26 3/8	211.34	205	(3.0)	2.32	-	0.36	1.36
Esterline Corp. CSD 6 1/4/95	8.1	27.03	7 3/4	20.95	63	200.7	9.92	10.94	0.40	1.65
Ethan Allen, Inc. CSD 5 1/4/96	3.03	32.26	19 1/4	62.10	75	20.8	7.00	7.72	0.55	2.86
Ethan Allen, Inc. CSD 4 7/8/98	20.0	18.96	19 1/4	36.50	63	72.6	7.74	8.72	0.55	2.86
Fairmount Foods Co. CSD 9/96	15.0	68.97	12 7/8	88.80	104 1/2	17.7	8.61	8.52	0.68	5.28
Farah Mfg. Co. CSD 5/94	9.93	26.58	5 1/8	13.62	51	274.4	9.80	11.60	None	None
Fedders Corp. CSD 5/96	30.0	20.00	5 1/2	11	51 3/4	370.5	9.66	11.06	None	None

(A) Settlement price: All other issues in table are at Market Price.

AFFIDAVIT IN SUPPORT OF ORDER CERTIFYING CLASSES AND DIRECTING SETTLEMENT HEARING (Filed July 27, 1976)

(pp. 610a-645a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI, Plaintiffs, -against- THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK, INDIAN HEAD, INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO. INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R. L. GENILLARD and CHEMICAL BANK OF NEW YORK, Defendants.	Civil Action File No. 74 Civ. 5755 (CES Jr.) AFFIDAVIT IN SUPPORT OF ORDER CERTIFYING CLASSES AND DIRECTING SETTLEMENT HEARING
WILLIAM B. WEINBERGER, Plaintiff, -against- RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD, INC., Defendants.	Civil Action File No. 75 Civ. 229 (CES Jr.)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM LEIN II, being duly sworn, deposes and says:

I am a member of the firm of AUSTRIAN, LANCE & STEWART, P.C., attorneys for plaintiffs EDWARD BRUCKER and DANIEL R. KAPLAN, who, as owners of Convertible Debentures of Indian Head Inc. ("INDIAN HEAD"), first instituted this class action on December 31, 1974.[1]

Plaintiffs' original class action Complaint was brought on behalf of all INDIAN HEAD Convertible Debenture owners. It alleged that the Convertible Debenture owners were never sent notice of 1973 and 1974 tender offers for INDIAN HEAD Common Stock and were thus deprived of the opportunity to convert into Common Stock at an attractive price. Plaintiffs complained that they could have converted their Debentures into Common Stock, and received $701 each, had they been sent notice that:

> a billion dollar Dutch oligarchy, THYSSEN-BORNEMISZA EUROPE N.V. ("TBE") made two $27 per share cash tender offers for INDIAN HEAD Common Stock in September 1973 and July 1974;
>
> TBE intended to take over and, on August 19, 1974, did acquire 90.6% control of INDIAN HEAD;
>
> INDIAN HEAD's Common Stock and Debentures would be and were delisted from the New York Stock Exchange on August 30, 1974.

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1. We also represent CECIL B. HUSKEY and W. T. STRATTON, owners of 3,100 and 6,000 INDIAN HEAD Warrants, respectively, and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI, which owns 32 shares of INDIAN HEAD Common Stock, who have been added as plaintiffs in the Second Amended Complaint, filed concurrently herewith.

Plaintiffs alleged that, as a result of TBE's taking over INDIAN HEAD in August 1974 and the delisting of the Common Stock and the Debentures,[2.] the value of the Debentures sorely depreciated in trading in a thin over-the-counter market in the $420-$480 range. They, therefore, asked for judgment entitling them to convert at the $27 per share tender price so that they would be paid the equivalent of $701 per $1,000 Debenture, which they would have received had they been sent notice of the tender offers.

On February 12, 1976, fourteen months after our Complaint was filed, TBE proposed to merge INDIAN HEAD into a TBE subsidiary on the following basis:

(a) $30 per share for the Common Stock which was $3 more than the tender offer;

(b) $779.22 for the Debentures, which was $78 more than the $701 tender conversion price; and

(c) nothing for the Warrants because the $30 merger price equalled the $30 exercise price. (In TBE's 1974 Common Stock tender offer, TBE also offered $2.25 for all Warrants, which then entitled the holder to purchase Common Stock for $25 per share.)

Eight days later, on February 20, 1976, plaintiffs BRUCKER and KAPLAN sought to enjoin the merger through an

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2. They were first suspended from trading on the NYSE on August 30, 1974, and then delisted on September 24, 1974.

Amended Complaint filed on behalf of all owners of Warrants and Common Stock, as well as of Debentures. Plaintiffs then moved for a preliminary injunction, and on the return date the merger proposal was withdrawn ("ABORTED MERGER").

Settlement negotiations followed, resulting in a $32,000,000 plus cash settlement - more than $12,100,000 to the Debentures, $18,700,000 to the Common Stock and $1,400,000 to the Warrants - which will be paid to all class members in connection with the merger of INDIAN HEAD into a TBE subsidiary, subject to this Court's approval ("MERGER").[3] The following tables show how the settlement compares with the prices in the tender offers, the market and the ABORTED MERGER:

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3. This total and its parts have been rounded and the actual amounts are likely to be somewhat greater.

THE SETTLEMENT AND THE TENDER OFFERS - PER SHARE

	Tender Offers	Settlement [4.]	Settlement Benefit
$1,000 Debentures (14,295)	$701 if converted	$844.16	$143.16
Common Stock (585,386) [5.]	$27	$ 32	$ 5
Warrants (349,467)	$ 2.25 [6.]	$ 4 [7.]	$ 1.75

THE SETTLEMENT AND THE MARKET PRICES - PER SHARE

	Sept. 1974 Mkt. Prices [8.]	Settlement [4.]	Settlement Benefit
$1,000 Debentures (14,295)	$420-$480	$844.16	$364.06-$424.16
Common Stock (585,386) [5.]	$ 15-$ 18	$ 32	$ 14 -$ 17
Warrants (349,467)	$ 1-$1-3/4	$ 4 [7.]	$ 2-1/4-$ 3

THE SETTLEMENT AND THE ABORTED MERGER - PER SHARE

	Aborted Merger	Settlement [4.]	Settlement Benefit
$1,000 Debentures (14,295)	$779.22	$844.16	$64.94
Common Stock (585,386) [5.]	$ 30	$ 32	$ 2
Warrants (349,467)	$ -0-	$ 4 [7.]	$ 4

4. Owners of Debentures on September 27, 1973, who sold before July 2, 1974, will receive the difference between $650 and their sales price, but no more than $50; while owners on July 2, 1974, who sold between July 12, 1974, and the date of the order will be entitled to the difference between $701 and their sales price, but no more than $100.

5. Exclusive of 35,032 Warrants owned by TBE.

6. The 1974 Tender Offer only. No tender for Warrants was made in 1973.

7. Warrant owners on July 2, 1974, will receive $1.50 and owners on the date of the order and the Merger Date will receive $2.50, so that those who have owned continuously since July 2, 1974, will receive $4, and we understand from Indian Head that they represent a majority.

8. The month following the delisting of the Debentures and the Common Stock from the NYSE. The Debentures and Common Stock were then traded over the counter; the Warrants on the American Stock Exchange.

Thus, the settlement represents to all Classes, in the aggregate, at least:

> $5,600,000 more than they would have received in the tender offers;
>
> $14,000,000 more than they would have received had they all sold in September 1974; and
>
> $3,750,000 more than they would have received in the ABORTED MERGER.

In light of the settlement, we are submitting herewith the accompanying order, consented to by the defendants served:

(a) for class action certification; and,

(b) for a hearing on the fairness of the Settlement;

and I make this affidavit in support thereof.

Concurrently, there has been filed a Second Amended Complaint, adding as plaintiffs CECIL G. HUSKEY, who owns 3,100 Warrants, W. T. STRATTON, who owns 6,000 Warrants and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI ("NORTE"), which owns 32 shares of Common Stock.

WEINSTEIN & LEVINSON, attorneys for plaintiff in a companion Debenture case, Weinberger v. Powers, 75 Civ. 229, have authorized me to state that they join in support of the proposed order.

The Court will recall that a third action involved in this litigation was filed on behalf of Warrant owners in April 1975, Shamrock v. Indian Head, 75 Civ. 1736. Shamrock's counsel, Wolf, Haldenstein, Adler, Freeman & Frank, participated in the settlement negotiations; joined in our demand that the

settlement require a $4 payment to the Warrant owners; and agreed to and supported the settlement ultimately arrived at in principle. A few days later, Shamrock's counsel informed me - he said with considerable embarrasment and I believe him - that Shamrock had a private claim against INDIAN HEAD, for which it demanded $30,000, $5 for each of the 6,000 Shamrock Warrants, in addition to the $4 settlement.

This private Shamrock claim was based upon the assertion, never made in its two complaints, nor otherwise, that, between the first and second Tender Offers, INDIAN HEAD's President sent Shamrock's President a copy of the first Tender Offer. The first Tender Offer stated that TBE did not intend to acquire control of INDIAN HEAD. Since TBE did acquire control, Shamrock claimed that it was misled and, therefore, had its own $30,000 damage claim. Shamrock's counsel then informed me that Shamrock took the position that unless its private claim was satisfied, Shamrock would oppose the settlement. TBE has informed me that it has refused to pay or settle this alleged claim, and of course, I do not think they could take any other position.

Accordingly, Shamrock is not a party to the proposed settlement and, in view of its conflict of interest, has not been included as a class representative, but we will send counsel a copy of these papers.

THE INDIAN HEAD TAKEOVER STORY

The factual basis for the proposed order can best be evaluated in light of the history of this case, and a brief summary follows:

One of Fortune's 500 biggest companies, INDIAN HEAD is a diversified company with assets of over 300 million

dollars and annual sales of more than four hundred million dollars derived from such businesses as containers, metal, automotive and communications products, specialty textiles and utilities. It became a target for a takeover, as alleged in the Second Amended Complaint and supported by the uncontradicted public documentary record, and this is what happened:

A. THE TENDER OFFERS

1. First Tender:

(a) On September 19, 1973, TBE made a deal with the INDIAN HEAD management: INDIAN HEAD agreed to sell TBE 750,000 treasury shares of Common Stock for $27 per share, cash, and to support TBE's tender offer for 1,100,000 shares of INDIAN HEAD Common Stock. In exchange, TBE agreed to buy from INDIAN HEAD directors up to 50,000 of their shares of Common Stock and to elect to TBE's top policy board James R. Robison, Chairman of INDIAN HEAD's Finance Committee and its former Chairman of the Board.

(b) On September 27, 1973, TBE made a $27 per share cash tender offer for 1,100,000 shares of INDIAN HEAD Common Stock which was then listed on the New York Stock Exchange. As a result, TBE acquired 33.9% of INDIAN HEAD's Common Stock for more than $50,000,000.[9]

2. Second Tender:

(a) On July 12, 1974, TBE made a second cash tender offer, this time for all of INDIAN HEAD's Common

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9. 1,200,000 shares were tendered and the 750,000 treasury shares were purchased from INDIAN HEAD.

Stock at the same $27 per share price. It also offered to purchase all outstanding Warrants for $2 each, later increased to $2.25. At that time, each Warrant holder was entitled to purchase one share of Common Stock for $25.[10]

(b) INDIAN HEAD officers and directors, as a group, tendered more than 542,000 Common shares to TBE for which they were paid in cash, at $27 per share, $14,634,000.

(c) Through the Second Tender Offer, TBE increased its control of INDIAN HEAD to 90.6%, acquiring an additional 3,687,000 shares for a total cash price of nearly $100,000,000.

(d) Out of 399,255 Warrants outstanding, TBE acquired, in the Second Tender Offer, only 35,082 Warrants.

(e) After the TBE takeover, INDIAN HEAD Common Stock and Debentures were delisted from the New York Stock Exchange. (The Warrants continued to be traded on the American Stock Exchange.)

B. THE LITIGATION

1. On December 31, 1974, this action was instituted to compel INDIAN HEAD to give the Debenture owners what they would have received had they received notice of the tender offers and converted: $701 per $1,000 Debenture.

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10. Thus, the $2.25 tender offer represented a premium of $.25 over the $2 a Warrant holder would have received had he purchased Common Stock at the $25 exercise price and then offered it to TBE at the $27 tender price.

2. In January 1975, Weinberger brought his action (75 Civ. 229) seeking damages for INDIAN HEAD's failure to give Debenture holders notice of the tender offers.

3. In March 1975, we moved for summary judgment. Uncovering the facts required intensive investigation of the public record, rather than formal discovery, because:

> The tender offers are on file with the Securities and Exchange Commission, along with all material exhibits.
>
> The documentary record and the financial information necessary in order to determine both liability and damages, and going back ten years, are all laid out in filings with the Commission, with the New York Stock Exchange and the American Stock Exchange as to the Warrants.

Thus, our summary judgment papers included 16 exhibits and 25 pages of affidavits, and defendants furnished 41 exhibits in a three-inch-thick bound volume, plus 16 other exhibits.

4. In April 1975, Shamrock Corporation brought its action on behalf of Warrant holders (75 Civ. 1736), claiming that the $2.25 tender offer was unfair and fraudulent.

C. THE ABORTED MERGER

1. On February 12, 1976, when our motions for class action determination and summary judgment were still sub judice, TBE announced that it proposed to merge INDIAN HEAD into a TBE subsidiary on the following terms:

> (a) $30 for the Common Stock compared to the $27 tender offer;
>
> (b) $779 for the Debentures compared to the $701 which we sought in our original complaint;
>
> (c) nothing for the Warrants because the exercise price was now $30, the same amount as TBE offered for the remaining Common Stock.

2. (a) Eight days after the merger announcement, we filed our First Amended Complaint on behalf of the Common Stock and Warrants, as well as the Debentures. At the same time, we moved to enjoin the merger on the grounds that it had no business purpose and that TBE had used its control in order to dictate unfair prices to the minority stockholders.

Thus, we claimed that the Debentures had a life of seventeen years (through 1993); that the merger constituted a constructive redemption; and that the redemption price was $1,033. Similarly, the Warrants did not expire until 1990 and nothing was hardly a fair price for the "sudden death" inflicted upon the Warrant owners by the fiduciary control stockholder. As to the Common Stock, we alleged that $30 was an unfair price.

(b) On the return date of our preliminary injunction motion, TBE announced that it was withdrawing the merger plan and would negotiate with us in good faith. Simultaneously with the withdrawal of the merger plan, plaintiffs in the Shamrock case (75 Civ. 1736) filed an amended complaint, this time on behalf of the Common Stock as well as Warrants, claiming that both tender offers were fraudulent because they failed to disclose what the merger plan revealed, namely, that TBE intended all along to merge INDIAN HEAD at unfair prices to the minority security and warrant holders. Shamrock asked for recission of the tender offers.

D. THE SECOND AMENDED COMPLAINT

In view of Shamrock's conflict of interest, we have filed herewith a Second Amended Complaint on behalf of DEBENTURE plaintiffs BRUCKER and KAPLAN, WARRANT owner plaintiffs HUSKEY and STRATTON, and COMMON STOCK holder plaintiff NORTE. The Second Amended Complaint embodies the facts, circumstances and allegations uncovered in the course of these proceedings and even though we have grave reservations as to the legal sufficiency of many of the Shamrock claims, we nevertheless felt that fairness to the COMMON STOCK and WARRANT owners required their inclusion. The Second Amended Complaint, which is summarized in more detail in the accompanying Memorandum, basically charges that TBE used the First and Second Tender Offers to acquire control of INDIAN HEAD and then forced out the minority security and warrant holders at unfair prices. It asks that the interests of the minority be liquidated and paid out.

THE SETTLEMENT

A. FAIRNESS OF THE PAYMENTS

This settlement follows a year and a half of litigation. During that time, we made a detailed analysis of the business and affairs of INDIAN HEAD, as reflected in the 73 exhibits filed by both sides in connection with the Summary Judgment motion and the 12 exhibits which accompanied our Motion for Preliminary Injunction. In addition, we had completed our preparation for the Preliminary Injunction hearing, which included our 25-page proposed Findings of

Fact and an equally extensive Stipulation of Facts with the defendants, which had been tentatively agreed upon. We also had reviewed and analyzed the present and historical financial condition, business and affairs of INDIAN HEAD with two expert witnesses. An affidavit submitted by one of our experts was included in our Summary Judgment motion papers, and the second expert was prepared to testify had had the Preliminary Injunction motion hearing been held.

On the basis of this factual record and disregarding entirely serious legal questions as to liability, we submit that the fairness of the over 32 million dollar cash settlement package speaks for itself:

> $844.16 for each Debenture, contrasted with $701, if they had received notice of and converted in the tender;[11]
>
> $32 for the Common Stock, compared to the $27 tender offer; and,
>
> $4 for the Warrants, compared to $2.25 in the second tender.[12]

Importantly, this settlement will be net to each Class Member because TBE will bear attorneys' and experts' fees and expenses as awarded by the Court, but not more than $550,000 for our firm and Weinstein & Levinson. Therefore, although the aggregate cash payments to the Classes is $3,750,000 more than the ABORTED MERGER proposal, the assumption of counsel fees by TBE makes the actual benefit more than $4,300,000. As a result:

Each Warrant owner will actually pocket

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11. And up to $50 for those who sold (DEBENTURE SELLER CLASS A) between the first and second tenders, and up to $100 for those who sold after the second tender (DEBENTURE SELLER CLASS B).

12. Warrant owners on July 2, 1974 who sold thereafter will receive $1.50.

$4 rather than the possible $3.25, or less, he would take home if the attorneys' fees and expenses were deducted pro rata from his settlement share; and the Warrant seller will get $1.50 rather than a possible sum in the $1.20 range.

Each Debenture owner will actually get $844.16 rather than possibly $815 or le and each Debenture seller will similarly receive his full share without deduction.

Each Common Stock holder will actually take home $32 rather than between $30 and $31 per share.

Market value is one of the most important tests of fair value, particularly of a New York Stock Exchange listed company like INDIAN HEAD. A look at the market immediately before the tenders and ABORTED MERGER, and now, shows how well this settlement passes that test.

1. THE SETTLEMENT, FIRST TENDER AND THE MARKET

	Settlement	9/26/73 Market Price [13]	9/27/73 Tender
Common Stock	$32	$24-3/4	$27
Debentures	$844.16	$790 [14]	$701 - if converted

2. THE SETTLEMENT, SECOND TENDER AND THE MARKET

	Settlement	7/1/74 Market Price [13]	7/12/74 Tender
Common Stock	$32	$23-1/4	$27
Debentures	$844.16	$650 [14]	$701 - if converted
Warrants	$4	$4-3/4	$2.25

13. Over-the-counter for the Common Stock and Debentures; American Stock Exchange for the Warrants.

14. Debenture market prices are quoted in tenths.

3. THE SETTLEMENT, ABORTED MERGER AND THE MARKET

	Settlement	2/11/76 Market Price [13.]	Aborted Merger
Common Stock	$32	$24	$30
Debentures	$844.16	$600 [14.]	$779.22
Warrants	$4	$2	$-0-

4. THE SETTLEMENT AND TODAY'S MARKET

	Settlement	July 2, 1976 Market Price
Common Stock	$32	$28-1/4-$28-3/4
Debentures	$844.16	$770 - $790 [14.]
Warrants	$4	$ 1-7/8-$2-1/8

Taken separately, we think the settlement is more than fair:

1. DEBENTURES

(a) the face amount of each Debenture is $1,000, with interest at 5 1/2%. Expiring in 1993, INDIAN HEAD has the right to redeem, this year at $1,033. While $844.16 represents a premium of 20% over the maximum damages of $701 originally prayed for when this action commenced, it also involves a discount of some 15% off the redemption, amply justified, we think, by the risks of litigation.

(b) each Debenture Seller Class A member who sold between the First and Second Tender Offers, when the market was mostly over $650, will receive up to $50, if he sold for less than $650. Since

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13. Ibid.

14. Ibid.

he has had the use of his money for more than two years, we think he is being treated fairly. Each Debenture Seller Class B member who sold after the Second Tender Offer will be paid up to $100, if his selling price was below $701. He, too, has had the use of his money, but is entitled to more than Debenture Class A members because the average market after the Second Tender Offer was much lower than after the First.

2. WARRANTS

(a) the $4 settlement, net to the Warrant holder, is close to the $4.50 market in September 1973, when the exercise price was $25 compared to $30 today. Attached as Exhibit A is the opinion of our expert, Martin J. Whitman, dated May 7, 1976, that $4 is a fair price.

(b) each Warrant Seller Class A member, who sold after the Second Tender Offer began when the market was in the $2 range, had the use of his money for upwards of a year and a half. The $1.50 settlement payment, net to him, comes close to making him whole, and close to the $4.50 market prior to the Second Tender.

3. COMMON STOCK

We have already shown that the settlement represents a handsome premium over the New York Stock Exchange market prices for

the COMMON immediately before the First Tender. The relationship to earnings is equally fair. Thus, INDIAN HEAD earned $3.77 a share on its COMMON STOCK in 1974 and this year's earnings are at the same rate. (Last year's earnings were only 67 cents per share because of divestiture of INDIAN HEAD's specialty textile group.) We are advised that 6 to 8 times earnings is a fair test for comparable companies. At $32, the COMMON STOCK will receive the very top price-earnings ratio.

If damages were the only issue this settlement would represent more than what is likely to be obtained after trial and final judgment on that question alone. But since liability, particularly as to the Warrants and Common Stock is, in my opinion, quite questionable, this settlement is as beneficial as any in my experience and I recommend it with pride.

B. NON-PAYMENT TO FIRST TENDER WARRANT OWNER SELLERS

The settlement makes no provision for payment to the members of WARRANT CLASS B -- those who owned Warrants from August 1, 1973 to July 1, 1974.[15] Certification of this class is requested only because it was embraced in the Shamrock Complaint, which contended that the First Tender Offer was misleading because it falsely stated that TBE was not seeking to control INDIAN HEAD.

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15. A period which commences six weeks before the First Tender Offer and ends with the day before trading was suspended preparatory to the Second Tender Offer.

Even if Shamrock could overcome the difficulty of proving that claim, liability to the Warrant owners to whom no tender was made or sent presents an even greater hurdle. For example, on August 1, 1973 when the exercise price of the Warrants was $25, the Common Stock closed at 18-3/4 and the Warrants closed at 6-1/2. During the September 12, 1973 - October 11, 1973 First Tender period, the Warrants traded $6 to $7. By November, they fell to $4 to $5, where they remained until trading was suspended on July 2, 1974. After the First $27 Tender Offer was concluded on October 11, 1973, the Common Stock market price slowly declined and, during the first six months of 1974, traded mostly in the $18 to $20 range.

On the basis of the law and the market reality, I do not think that the members of Warrant Seller Class B - who have had the use of their money for three years - are entitled to any settlement payment. We think the Shamrock allegations compel their inclusion in the Class, and thus they are bound by the settlement, unless they opt out.

THE CLASSES

Each class claim herein is brought by each plaintiff individually on his own behalf and representatively on behalf of all members of each of the classes as defined in the Settlement Agreement and the accompanying proposed order. INDIAN HEAD advises that each class consists of more than 1,000 Warrant Owners.

The Stipulation and the Order define the classes

as follows:

1. DEBENTURES. The Debenture Class is divided into three parts:

(a) DEBENTURE OWNER CLASS - all owners beneficially or of record on the entry of the Order and on the date of the Merger;

(b) DEBENTURE SELLER CLASS A - all owners on [redacted] September 27, 1973 who sold between that date and July 1, 1974;

(c) DEBENTURE SELLER CLASS B - all owners on July 2, 1974 who sold between July 12, 1974 and the entry of the Order.

2. COMMON STOCK CLASS. All owners on the date of the entry of the Order.

3. WARRANTS. The Warrant owners are divided into four classes. Three classes will receive the benefit of the Settlement:

(a) WARRANT OWNER CLASS A - owners on the date of entry of the Order and on the Merger Date (who will receive $2.50);

(b) WARRANT OWNER CLASS B - owners on July 2, 1974 who continue to own on the Merger Date (who will receive $4);

(c) WARRANT SELLER CLASS A - owners on July 2, 1974 who sold between July 12, 1974 and the date of the Order (who will receive $1.50).

The fourth:

WARRANT SELLER CLASS B - who sold between August 1, 1973 (the First Tender Offer was made on September 27, 1973) and July 1, 1974 (the day before trading was suspended preparatory to the Second Tender Offer)

will receive no payment under the settlement.

No request for class certification is sought on behalf of the COMMON STOCK holders in the First and Second $27 Tender Offers, even though they may be covered by the Shamrock Complaint. Leaving liability aside, we cannot establish that $27 was an unfair price. As already indicated, prior to the First Tender Offer, the COMMON STOCK was never higher than $19 in August 1973 and did not reach $20 until September 19, 1973, eight days before the First Tender Offer. Similarly, between the First and Second Tender Offers, the market was largely in the $20 range. On the basis of market alone, or on the basis of times-earnings ratio, we are satisfied that the COMMON STOCK holders in the two Tender Offers could not establish damages. Attached as Exhibit B is our expert's opinion that he can find no damage.

It is also noteworthy that to this moment, no COMMON STOCK holder who tendered in either Tender Offer has brought any action in this or in any other court. Between our filing of the orignal BRUCKER Complaint on December 31, 1974 and the February 12, 1976 announcement of the ABORTED MERGER, we received many letters and calls from DEBENTURE and WARRANT owners, but not one from a COMMON STOCK holder.

None of them could have relied on the original BRUCKER, SHAMROCK or WEINBERGER Complaints, because those cases were not brought on behalf of, and did not mention COMMON STOCK holders.

Since the COMMON STOCK holders who tendered are given no class action status, they will receive no notice of the settlement.

I. LEGAL BASIS FOR CLASS CLAIMS

JURISDICTION: All claims arise under §10b and Rule 10b-5 of the '34 Act; the Debentures, Common Stock and Warrant claims with respect to the Second Tender Offer also arise under the Williams Act; pendent jurisdiction likewise applies to the Common Law breach of fiduciary obligation invoked as to all classes.

In summary, the legal claims for the respective classes follow:

1. DEBENTURES:

(a) The failure to give notice of the Tender Offers was a default under the INDENTURE and the $1,000 principal face amount of each Debenture, plus interest, has been due and payable since September 27, 1973.

(b) The delisting of the Common Stock from the New York Stock Exchange in September 1974, and the making and withdrawal of the February 12, 1976 Merger Proposal, further damaged the Debentures and were additional breaches of the INDENTURE, likewise causing acts of default.

(c) The Merger Proposal was an irrevocable redemption because of TBE's control of INDIAN HEAD, entitling the Debentures to the $1,033 redemption price.

2. COMMON STOCK and WARRANTS:

(a) The Second Tender Offer was unfair and breached the fiduciary obligations owed by the majority stockholder, officers and directors to the Warrant holders. Similarly, the aborted merger had no business purpose and was an abuse of the defendants' duty to all security holders.

(b) The ABORTED MERGER chilled the market and made it impossible to obtain a fair price for any security.

II. THE CLASS ACTION IS MOST APPROPRIATE FOR THIS CASE.

Class action certification is more than just appropriate in this case. We submit it is essential because it is the only way the more than $32,000,000 settlement package can be distributed to the debt, equity and warrant beneficiaries. In all respects the Proposed Settlement confirms the applicability to this litigation of the factual preconditions to the invocation of Rule 23.

A. JOINDER OF ALL MEMBERS IS IMPRACTICABLE.

All three classes consist of more than 1,000 security owners each. DEBENTURES are owned in $1,000

denominations, while the WARRANTS and COMMON STOCK are owned in varying amounts, including as few as one share or one warrant, and there are hundreds of small holders in each class. The members of each class are widely scattered and their holdings would be generally too small to warrant bringing individual actions.

B. COMMON QUESTIONS.

1. DEBENTURES. There is one fact common to every person who was a registered owner on September 19, 1973, or thereafter:

> No notice of either tender offer and the prospective delisting of the Common Stock was ever sent to them.

This single common fact gives rise to a single common question of law:

> Were the defendants obligated to send notice of the tender offer and prospective delisting of the Common Stock to each registered owner?

2. COMMON STOCK and WARRANTS. The Second Tender Offer, raising the legal question of whether it was misleading and the prices offered unfair, applies equally to every WARRANT holder. The February 12, 1976 Merger Proposal and its withdrawal apply factually to both WARRANT and COMMON STOCK holders, raising the same questions as to market manipulation, business purpose, breach of fiduciary obligation, etc.

C. THE CLAIMS ARE TYPICAL.

Failure to send notice being common to all, the claim of every DEBENTURE owner is the same. Therefore, the claims of plaintiffs BRUCKER and KAPLAN are typical of the claims of the entire DEBENTURE Class, and they are representative of all registered owners who were defrauded because of the failure to send them notice. Plaintiffs HUSKEY and STRATTON were WARRANT holders on the Second Tender Offer, receiving the same offer as did all members of the WARRANT Class, so that their claims are likewise typical and they are representative of all WARRANT holders. The DEBENTURE and WARRANT plaintiffs continued as security holders after the Second Offer so that, together with COMMON STOCK holder plaintiff, NORTE, a COMMON STOCK holder since February 1975, their claims with respect to the February 12, 1976 Merger Proposal are likewise typical and they are representative of all security holders.

D. ADEQUACY OF REPRESENTATION.

We submit that the Proposed Settlement, which gives each class member substantially more than the ABORTED MERGER Proposal and far, far more than they could obtain in the market -- bespeaks the adequacy of the representation on behalf of all security holders. So does the fact that the settlement is the result of plaintiffs BRUCKER and KAPLAN's swift response, on behalf of all security holders, to the Merger Proposal, announced on Lincoln's birthday: the Amended Complaint was filed within eight days and the Show Cause Order signed within eleven. The Amended Complaint and its accompanying Motion Papers alone produced the

withdrawal of the Proposed Merger, which in turn resulted in defendants' agreement to negotiate, and in the ultimate proposed settlement.

Just as the proposed settlement benefits all INDIAN HEAD security holders, so the facts which give rise to this litigation apply equally to everyone. No notice of the Tenders was sent to any of the registered owners of DEBENTURES. The Tender Offer was sent to all COMMON and WARRANT owners. Delisting of the COMMON STOCK had a share and share alike [sic.] effect on all the securities convertible or exercisable into COMMON STOCK. And the merger and its withdrawal, and the chilled market, were all of a piece for every INDIAN HEAD security holder.

The consequences to all class members being the same, this is just the type of case for which a class action was designed. It would be the only practical method of litigating the issues raised by the Tender Offer and Merger, and, of course, is the vehicle for their settlement. Although the facts are undisputed, the legal issues in this setting are novel. With more than 1,000 owners each, countless individuals could never be protected save by this class action and by its settlement.

Each class is easily definable. The DEBENTURE class consists of registered owners, the names and addresses of whom are in the possession of the defendants, namely each registered owner on and after September 27, 1973. The members of the other classes are all identifiable on the transfer books of INDIAN HEAD.

Plaintiffs BRUCKER and KAPLAN, who own an aggregate of $11,000 in CONVERTIBLE DEBENTURES, adequately represent the DEBENTURE Class; plaintiffs HUSKEY and STRATTON, who together own 9,100 WARRANTS, adequately represent that Class; together, as owners of securities convertible or exercisable into COMMON STOCK, they are representative of the COMMON STOCK; and injuries to them are the same, except as to damages, as those inflicted upon the COMMON STOCK. NORTE, a COMMON STOCK holder since February 1975, is representative of all COMMON STOCK holders who TBE tried to freeze out through the February 12, 1976 Merger Proposal. Were it not for plaintiffs BRUCKER and KAPLAN, and their Motion to enjoin the Merger, none of the other Classes would have received the benefit of the settlement.

My firm, AUSTRIAN, LANCE & STEWART, P.C., is experienced in matters of this type, as Judge Weinfeld noted in approving the settlement and fee applications in Blank v. Talley Industries, Inc., (SDNY 1974) 64 FRD 125, 132 and 390 F.Supp. 1, 5, 6 (1975). We have represented and now represent both plaintiffs and defendants in class actions and securities cases. In a recent class action we represented plaintiffs, Rothschild v. Helme, 75 Civ. 2866 before Judge Bricant, which was mooted because the defendants gave the relief we sought; in Braun v. Widmann, (DCMD Pa. 1975) 73-670 Civil unreported, we won summary judgment for the defendant corporation in a 10b-5 class action; and I was counsel for the plaintiffs in the landmark case, Mutual Shares Corporation v. Genesco, Inc., 387 F.2d 540 (2d Cir. 1967), which established for the first time a 10b-5 right of stockholders to equitable relief against

corporate stock manipulations.

Finally, there are no actual or potential conflicts of interest. All of the members of each class have been equally mistreated. Plaintiffs are in no different situation from any other security holders, except that the damages vary.

For all of the foregoing reasons, and with the consent of those defendants who have been served, we respectfully submit that the Proposed Order submitted herewith should be granted, this action should be determined as a Class Action and Notice of Settlement and Date of Hearing directed to be sent to each class member.

No previous application has been made for the relief sought herein.

/s/ William Klein II
WILLIAM KLEIN II

Sworn to before me, this
20th day of July, 1976.

EXHIBIT A

MAY 7, 1976 OPINION OF M.J. WHITMAN [QUALIFICATIONS ANNEXED]

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

May 7, 1976

William Klein II, Esq.
Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020

Dear Bill:

I am sending you this letter to confirm to you the reason why I believe that a price of $4 per Warrant for Indian Head Warrants is fair to Warrant holders. Under the terms of Warrants, a holder is entitled to buy one (1) share of Indian Head Common Stock at $30 per share until May 15, 1980, $35 per share until May 15, 1985 and at $40 per share until May 15, 1990 when the Warrants expire.

Based on a cash merger price of $32 for Indian Head Common Stock, the theoretical value of the Warrant is $2 per Warrant, i.e., $32 cash merger price minus $30 Warrant exercise price equals $2 per Warrant. There is a strong argument to be made that a Warrant holder is only entitled to a theoretical price if an event which had always been a possibility, e.g., a merger, occurs. Unlike other security holders such as creditors entitled to interest and a return of principal and common stock holders entitled to dividends when declared and a residual participation in profits, a Warrant holder only becomes entitled to something from an issuing corporation if the Warrant is exercised. A Warrant holder is entitled to nothing tangible, only the opportunity to participate in the stock market on a leveraged basis in the event that the underlying common stock appreciates. Lots of things can happen so that the Warrant holder's opportunity to participate in a stock market play is negated; - the price of the common stock can go down, the company can sell out, or, as is the case here, the company can merge (assuming there is no provable assertion that Indian Head has no legal right to merge with its parent). Put simply, Warrant holders who pay premiums over theoretical values, as do virtually all Warrant buyers, are taking a well-recognized risk that events may occur which reduce or eliminate the premiums over theoretical value at which Warrants sell.

The $4 price might be deemed unfair if one wants to assume that a) an Indian Head merger with its parent is, per se, illegal and provable as illegal in a trial on the merits and/or b) that a $32 cash merger price for Indian Head Common is unconscionably low or unfair. I am not qualified to comment on point a) or on any question of liability in the pertinent lawsuits. However, as to point b), I have, at your direction, been looking at Indian Head Common Stock for some two years now. I think a price of $32 for the Common Stock is well within a range of fairness.

If the value of the Indian Head Warrants were to be gauged solely by the stock market under the assumptions that a) the minimum merger price for Indian Head Common were $32, b) dividends on Indian Head Common were kept small, and c) there was a guaranty to keep exercise of the Warrants a viable option until May 15, 1990, then I would think the Warrants would have a stock market value of 10 - 12. Under those conditions, speculators would pay large premiums over a theoretical value of 2 in order to get a "big bang for a buck," i.e., one could participate in the opportunity for stock market appreciation in Indian Head Common to a greater extent by buying Warrants rather than by buying Common. As a matter of equity, though, it is impossible for me to see why any Warrant holder has an absolute entitlement to a stock market value; when the Warrant holder paid the premium, he took his chances with what had to be full awareness of potential risks as well as potential rewards.

A price of $4 represents a compromise between theoretical values to which a Warrant holder is surely entitled and a stock market price which is more nebulous. If the merger were called off or if defendants prevailed on the merits after trial, the price of $4 per Warrant would seem generous indeed. The average trading price for the Warrants for the thirty trading days prior to the February 11, 1976 merger announcement was $1.79 per Warrant. The proposed settlement compromises the claims of all classes of Indian Head securities holders from the Convertible Debentures on down. I cannot see where the Warrant holders are being treated less well than other classes of security holders. Indeed, I think they are being treated better in light of the strong, though not absolute, claim that can be made that they are entitled in a merger to only the theoretical value of $2 per Warrant, or its equivalent.

I'll be out of town next week except for Friday, May 14th. After that, I'll be out of the country until Tuesday, May 26th. I'd be pleased to discuss my views with you, or any other interested party, in detail when I return.

Warm regards.

Sincerely yours,

Martin J. Whitman

MJW:mh

EXHIBIT I

QUALIFICATIONS

MARTIN J. WHITMAN, Chartered Financial Analyst (CFA)
115 Broadway
New York, New York 10006
212 349-7555

EDUCATION:

B.S. Magna Cum Laude - Syracuse University
M.A. (Economics) - New School for Social Research
Also Graduate Work at Princeton University, New York University, New York Institute of Finance

BUSINESS BACKGROUND:

Period	Association	Duties
1950-1956	Shearson, Hammill & Co.	Security Analyst, Buyer Underwriting Department
1956-1958	Wm. Rosenwald	Portfolio Analyst, Involv in financial analysis of controlled companies
1958-1959	Ladenburg, Thalmann & Co.	Head of Research-Under-writing
1959-1960	Utilities & Industries Management Corp.	Head-Acquisitions Analy Group
1960-1967	Gerstley, Sunstein & Co.	General Partner, Researc and Corporate Finance
1967-1969	Blair & Co., Inc.	Vice President-Director Corporate Finance
1969-1974	Stanley Marks & Co. merged into Hamershlag, Kempner & Marks	Registered Representative Financial Consultant
1974 -	M. J. Whitman & Co., Inc.	President - Financial Con sulting - Securities Brok

QUALIFICATIONS (continued)

OUTSIDE ACTIVITIES:

Lectures on securities and valuations in various forums, including Wharton School, American Management Association, Financial Executives Institute, N.Y.U. Law School. Since 1972, I have been a member of the Yale University faculty where I conduct a weekly seminar entitled, "Money and Financial Institutions." I was a consultant to the Securities and Exchange Commission in its 1968-1969 Disclosure Study.

I have written a number of widely distributed booklets. Better known titles include, "The Strategy of Tender Solicitations," "Shareholder Distributions," "Corporate Reality and Accounting for Investors," and "Security Analysis and Accounting." Since 1974, I have been on monthly retainer to Bankers Trust Company of New York as a financial consultant in connection with certain of the bank's corporate finance activities.

SAMPLE COURT APPEARANCES:

Case	Where
B. & O. - Reading Private Treble Damage Action	U.S. D.C. Southern District, N.Y
Penn Central R.R. Bankruptcy Proceedings	U.S. D.C. Philadelphia, Pa.
Beck Industries Chapter X Proceedings	U.S. D.C. Southern District, N.Y
Bubble-Up Chapter X Proceedings	U.S. D.C. Los Angeles, Californi
Newman vs. Stein (Dreyfus Corp.)	U.S. D.C. Southern District, N.Y
Gerstle vs. Gamble-Skogmo	Special Master, N.Y.C.
Feit vs. Leasco	U.S. D.C. Eastern District, N.Y.
Kohn vs. American Metal Climax	U.S. D.C. Philadelphia, Pa.
Reeder vs. Mastercraft	U.S. D.C. Southern District, N.Y
Bragalini vs. Biblowitz	U.S. D.C. Southern District, N.Y

SAMPLE OF CORPORATE AND BUSINESS CLIENTS:

Barbara Lynn Stores, Inc.
Crane Company
Datron Systems, Inc.
DPF, Inc.
General Host Corporation
Interstate Stores, Inc.
Owens-Illinois, Inc.
Peat, Marwick, Mitchell & Co.
Select Theatres Corp.

EXHIBIT B

JULY 6, 1976 OPINION OF M. J. WHITMAN

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

July 6, 1976

William Klein II, Esq.
Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020

Re: Indian Head

Dear Mr. Klein:

We have been retained by your firm to render investment banking advice and assistance in connection with the above matter. As one part of this engagement, we engaged in a "due diligence" study to ascertain whether there were damages to Indian Head security holders who were given notice of two cash tender offers by Thyssen-Bornemisza Group, N.V. (TBG). The first was dated September 27, 1973 for a maximum of 1,100,000 shares of common stock at $27 per share net and the second, dated July 12, 1974, was for all common stock at $27 per share net and all warrants at $2 per warrant net, then increased to $2.25 per warrant net.

In response to your request for a brief synopsis of our more detailed opinion, this is to advise that we have uncovered nothing to indicate that there were any damages to Indian Head security holders arising out of either Tender Offers, and have concluded that each tender offer was at a fair and reasonable price. In reaching this opinion, we studied various factors we deemed relevant, including:

1. Historic prices for Indian Head, Inc. securities: For example, immediately prior to the first tender offer, the common stock traded at 22 1/2 and during the second and third quarters of 1973, prices ranged between a high of 24 7/8 and a low of 15 1/4.

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

2. Tender Offer Premium: The Indian Head common stock premium above the then current market, as contrasted with premiums in various other cash tender offers. The Indian Head premium above current market of at least 20% compares favorably with premiums in other comparable tender offers and appears reasonable.

3. Comparison between Indian Head, Inc. securities and those of comparable issuers which are publicly traded as to the comparative financial position, comparative operations and the relationship of stock price to earnings, both current and historic as well as the relationship of price to asset values: Issuers with diversified operations which could be deemed to be equal or better quality than Indian Head, Inc. include Amsted Industries, Continental Can, Eltra Corporation and Stewart Warner. On the basis of these comparisons, the Indian Head tender prices were fair and reasonable, even somewhat on the high side.

4. Value to TBG of control of Indian Head, Inc.: We believe the control values are reflected in the common stock tenders, and in the $2.25 tender for the warrants and do not believe that the common stockholders or warrant holders were damaged by the tender offers.

Sincerely yours,

M. J. WHITMAN & CO., INC.

Martin J. Whitman

Martin J. Whitman, C.F.A.
President

AFFIDAVIT OF WILLIAM KLEIN II IN SUPPORT OF SETTLEMENT
(Dated September 30, 1976)
(pp. 646a-712a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968, made by WILTRUD E. GADBOYS, as Grantor, CECIL G. HUSKEY, W. T. STRATTON and NORTE & CO., a partnership composed of JOSEPH C. GALDI and RITA D. GALDI, Plaintiffs, -against- THYSSEN-BORNEMISZA EUROPE N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND BANK, INDIAN HEAD, INC., JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT E. BACHRACH, GERARD B. HUISKAMP, WHITE, WELD & CO., INCORPORATED, L. EMERY KATZENBACH, H. H. THYSSEN-BORNEMISZA, R.L. GENILLARD and CHEMICAL BANK, Defendants.	74 Civ. 5755 (CES) AFFIDAVIT OF WILLIAM KLEIN II IN SUPPORT OF SETTLEMENT
WILLIAM B. WEINBERGER, Plaintiff, -against- RICHARD J. POWERS, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALLISTER, JOHN E. O'SULLIVAN, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, JAMES G. FERGUSON, THYSSEN-BORNEMISZA, INC. and INDIAN HEAD, INC., Defendants.	75 Civ. 229 (CES)
SHAMROCK CORPORATION, individually and on behalf of all holders of Common Stock and Warrants of Indian Head, Inc., similarly situated, Plaintiffs, -against- INDIAN HEAD, INC., THYSSEN-BORNEMISZA GROUP N.V., THYSSEN-BORNEMISZA, INC., WHITE, WELD & CO. INCORPORATED, et. al., Defendants.	75 Civ. 1736 (CES)

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

WILLIAM KLEIN II, being duly sworn, deposes and says:

I am a member of the firm of AUSTRIAN, LANCE & STEWART, P.C., lead counsel herein and attorneys for plaintiffs in the above captioned BRUCKER action, which we instituted on December 31, 1974. I make this affidavit in support of the application of all plaintiffs in the captioned actions for approval of the STIPULATION AND AGREEMENT OF SETTLEMENT dated July 20, 1976, as amended by the amendment to Stipulation and Agreement of Settlement, dated July 28, 1976 (the "SETTLEMENT AGREEMENT").

THE SETTLEMENT AGREEMENT provides for the compromise and settlement (the "SETTLEMENT") of all claims of present owners of INDIAN HEAD INC. Common Stock, 5 1/2% Convertible Subordinated Debentures[1] due 1993 ("Convertible Debentures") or Warrants,[2] as well as the claims of certain former owners of Convertible Debentures or Warrants.[3] Under the SETTLEMENT AGREEMENT, those security owners, upon surrender of their securities, will be paid, in cash:

---

1. Convertible Debentures are issued in face amounts of $1,000 or integral multiples thereof, and are convertible into 25.974 shares of Common Stock per $1,000 in principal amount.
2. A Warrant is an option to buy Common Stock at a fixed exercise price, currently $30 per share.
3. Those former Warrant owners who sold between August 1, 1973 and July 1, 1974 have received notice of the actions and the proposed Settlement, but will not receive any payment in return for dismissal of their claims. See page 58, infra.

- $32 per share of Common Stock upon the merger of INDIAN HEAD INC. into a subsidiary of defendant THYSSEN-BORNEMISZA INC. ("TBI");

- $844.16 per $1,000 in face amount of Convertible Debentures to owners on August 2, 1976 who still own on the date of the merger;

- $2.50 per Warrant to owners on August 2, 1976 who still own on the date of the merger;

- $4.00 per Warrant to owners on the above dates who have owned continuously from July 2, 1974.

In addition, former owners of these INDIAN HEAD securities will receive the following cash payments:

- Up to $50 per Convertible Debenture to owners on September 27, 1973 who sold on or before July 1, 1974;

- Up to $100 per Convertible Debenture to owners on July 2, 1974 who sold between July 12, 1974 and August 2, 1976;

- $1.50 per Warrant to owners on July 2, 1974 who sold between July 12, 1974 and August 2, 1976.

INTRODUCTORY

In this affidavit, we will describe the nature of the case, its history, the course of events leading to settlement, the settlement negotiations and the settlement terms, while our Memorandum will discuss the relative likelihood of proving liability and damages in the light of the law and the facts.

In urging this Court's approval of the SETTLEMENT, we are particularly mindful of the extent to which the Court,

in cases of this kind, gives weight to plaintiffs' counsel's opinion.[4] In order to evaluate my judgment and that of my firm, as lead counsel, the experience which we bring to that judgment is a threshhold question, which we briefly outline.

Our firm has been active in securities litigation and in corporate reorganization, bankruptcy and related matters for nearly sixty years. We have represented and now represent both plaintiffs and defendants in class actions and securities cases. Our experience and ability in matters of this type was most recently commented on by Judge Weinfeld in Blank v. Talley Industries, Inc., 64 FRD 125, 132 (SDNY 1974), and 390 F. Supp.1, 5, 6 (SDNY 1975); and I was counsel for plaintiffs in the landmark case, Mutual Shares Corporation v. Genesco, Inc., 387 F.2d 540 (2d Cir. 1967), which established for the first time a Securities Exchange Act of 1934, Rule 10b-5 stockholders' right to equitable relief against corporate stock manipulations.

Only last month, we represented the plaintiffs in a tender offer case, Galdi v. Wainger, 76 Civ. 3554 (SDNY 1976), before Judge Frankel, where our application for a temporary restraining order and preliminary injunction was mooted when the defendants withdrew the tender offer the day after our papers were served; and similarly, we represented the plaintiffs in Rothschild v. Helme 75 Civ. 2866

4. Since the Settlement involves the merger of Indian Head into a TBI affiliate we, of course, rely on the expert opinion of Martin J. Whitman as to its fairness in the light of the prospective merger.

(SDNY 1975), before Judge Brieant, and in Rothschild v. Great Western United Corp., Court of Chancery, Delaware (1974), both of which were mooted because the defendants gave the relief we sought. We now represent plaintiffs in Mutual Shares Corporation v. Delhi International Oil Corp., CA 3-74-1195-D (N.D. Texas, 1974), where the claims involve default in payment of more than $7,000,000 of principal and interest on a note; and, in Braun v. Widmann, 73-670 Civ. (DCMD Pa. 1975), we won summary judgment for the defendant corporation in a 10b-5 class action. A more detailed resume is annexed as Exhibit A.

SYNOPSIS

THE TWO TENDER OFFERS.

5. In September 1973, defendant THYSSEN-BORNEMISZA EUROPE N.V. ("TBE"), a giant Dutch conglomerate, made a tender offer for 30% of the Common Stock of a $300,000,000 diversified American Company, INDIAN HEAD INC. ("INDIAN HEAD"), which then had approximately 5,425,000 shares of Common Stock outstanding. To assure success, TBE first arranged for the support of the tender offer by INDIAN HEAD's directors and officers, who themselves owned more than 800,000 shares. They agreed to "cooperate with TBG in making the offer", and to cause INDIAN HEAD to sell to TBE 750,000 authorized but unissued shares at the $27 per share tender price.

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5. Then known as TBG and interchangeably referred to herein as "TBG" or "TBE".

On September 27, 1973, TBE made a formal $27 per share offer to INDIAN HEAD Common Stockholders to purchase up to 1,100,000 shares ("1973 TENDER OFFER"). The tender offer was successful and TBE actually acquired 1,213,619 shares, plus the 750,000 authorized but unissued shares, or a total of 33.9% of the then outstanding Common Stock, for which it paid more than $50,000,000.

Nine months later, on July 12, 1974, TBE sought tenders for ALL the Common Stock at $27 and ALL outstanding Warrants at $2.25 per Warrant ("1974 TENDER OFFER"). (Each Warrant was then exercisable to buy Common Stock for $25 a share). As a result of the 1974 TENDER OFFER, TBE increased its Common Stock holdings to 90.6%, paying nearly $100,000,000 more. Of that amount, more than $14,700,000 went to INDIAN HEAD officers and directors who sold TBE more than 545,000 shares of their own Common Stock. Both the Common Stock and the Debentures were then delisted from the New York Stock Exchange.

No notice of either tender offer was ever sent to the Convertible Debenture owners and, as attorneys for plaintiffs BRUCKER and KAPLAN, we brought a class action on December 31, 1974, to compel TBE to extend to the owners of Convertible Debentures, the right to receive the $27 tender price if they converted -- $701.30 for each $1,000 Convertible Debenture. Two months later, we moved for summary judgment and class action determination.[6]

6. These motions were sub judice when they were mooted by the Brucker Plaintiffs' Amended Complaint of February 20, 1976 and were formally withdrawn by Stipulation in July, 1976.

In January 1975, the WEINBERGER action was commenced on behalf of Convertible Debenture owners, alleging damages because of the failure to notify them of the tenders and because of the delisting of the Common Stock.

Since the $2.25 offered for each Warrant on July 12, 1974 was far below the $4.75 market price immediately before the 1974 TENDER OFFER was made, plaintiff SHAMROCK brought a class action suit for Warrant owners only, in April 1975. It claimed that the tender offers substantially impaired the value of the Warrants and asked that the Warrant owners be paid the amount by which the value of their Warrants was diminished. Defendants' F.R.C.P. 9(b) motion to dismiss the SHAMROCK complaint was denied in September 1975.

THE ABORTED MERGER.

Nineteen months after TBE acquired 90.6% control, and while all three actions were pending and motions for summary judgment and to dismiss the complaints were sub judice, TBE proposed, on February 12, 1976, to merge INDIAN HEAD into an affiliate by paying $30 per share for the Common Stock, which meant for the Convertible Debentures a price upon conversion of $779. Since the exercise price of the Warrants to buy Common Stock was also $30, the Warrant owners would have received nothing.

Eight days later, on February 20, 1976, we moved on behalf of plaintiffs BRUCKER and KAPLAN to enjoin the merger through an amended class action complaint filed on behalf of all owners of Warrants and Common Stock, as well

as of Convertible Debentures. At the same time, we moved for a preliminary injunction, but on the March 4, 1976 return date, the merger proposal was withdrawn ("ABORTED MERGER").

THE SETTLEMENT

Settlement negotiations followed, resulting in a $32,000,000-plus cash net settlement[7.] -- more than $12,100,000 for the Convertible Debentures, $18,700,000 for the Common Stock and $1,400,000 for the Warrants -- to be paid to the respective class members in connection with the merger of INDIAN HEAD into a TBE subsidiary ("MERGER"). Unlike most settlements, the actual value to the class members is even greater because TBE has agreed to pay the amount of any Court award for plaintiffs' counsel's fees and disbursements, not exceeding $600,000 in the aggregate.

The following tables show how this net settlement compares with the prices in the tender offers, the market prices after the 1974 TENDER OFFER, and with TBE's offer in the ABORTED MERGER.

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7. This total and its parts have been rounded, and the actual amounts are likely to be somewhat greater.

THE SETTLEMENT AND THE TENDER OFFERS - PER SHARE

	Tender Offers	Settlement	Net Settlement Benefit
$1,000 Convertible Debentures ($14,295,000 face value)	$701 if converted	8. $844.16	$143.16
Common Stock (585,386 shares)	$27	$32	$ 5.00
Warrants (349,467 Warrants)	9. 10. $2.25	11. $ 4	$ 1.75

THE SETTLEMENT AND THE SEPTEMBER 1974 MARKET PRICES - PER SHARE

	12. Sept. 1974 Mkt. Prices	Settlement	Net Settlement Benefit
$1,000 Convertible Debentures ($14,295,000 face value)	$420-$480	8. $844.16	$364.06-424.16
Common Stock (585,386 shares)	$15-$18	$32	$14-$17
Warrants (349,467 Warrants)	9. $1-$1-3/4	11. $4	$2-1/4-$3

THE SETTLEMENT AND THE ABORTED MERGER - PER SHARE

	Aborted Merger	Settlement	Net Settlement Benefit
$1,000 Convertible Debentures ($14,295,000 face value)	$779.22	8. $844.16	$64.94
Common Stock (585,386 shares)	$30	$32	$2
Warrants (349,467 Warrants)	9. $-0-	11. $ 4	$4

8. Owners of Convertible Debentures on September 27, 1973, who sold before July 2, 1974, will receive the difference between $650 and their sales price, but no more than $50; while owners on July 2, 1974, who sold between July 12, 1974, and August 2, 1976 will be entitled to the difference between $701 and their sales price, but no more than $100. (Trading was suspended between July 2, 1974 and July 12, 1974 because of the impending Tender Offer.)

9. and 10. -- See page 9.

Thus, the net settlement (including TBE's maximum $600,000 legal fee obligation) represents to all classes, in the aggregate, at least:

> $6,200,000 more than they would have received in the Tender Offers;
>
> $14,600,000 more than they would have received had they all sold in September, 1974; and
>
> $4,350,000 more than they would have received in the Aborted Merger.

All plaintiffs -- who own an aggregate of $26,000 Convertible Debentures, 15,100 Warrants and 132 shares of Common Stock -- advise that they approve the settlement. Also approving the settlement is the owner of $599,000 principal amount Convertible Debentures -- L.F. Rothschild & Co., the investment bankers whom we have represented in a number of securities cases and whose letter is reproduced following page 13 hereof. In addition, we heard from a number of security holders, and the following is a breakdown of that correspondence:*

> Out of $14,295,000 Convertible Debentures, the owners of $1,240,000 communicated with us. The owners of $1,212,000 (including L.F. Rothschild & Co.) indicated acceptance, the owners of

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9. Exclusive of 35,082 Warrants owned by TBE.
10. The 1974 Tender Offer only. No tender for Warrants was made in 1973.

* The letter of a Warrant owner who approves the settlement but questions why purchasers after July 12, 1974 should receive any payment is annexed, together with letters of two Warrant owners who questioned the $4 Warrant price, as Exhibit B; Exhibit B-1 is a letter from a common shareholder who paid an average of $43.72 for 1,050 shares and wants "to get the money back to the shareholders or to stop this takeover"; Exhibit B-2 is a letter from the owner of the $1,000 Convertible Debenture referred to above, who does not want to accept $844.16; and Exhibit B-3 is a July 12, 1976 letter (8 days before the public announcement of the settlement and a month before the Notice of Settlement was mailed), which appears to object to a settlement of less than $35 to $40 for the Common Stock, $95 for the Debentures and $8 to $10 for the Warrants. The writer, who owns 500 Warrants and $17,000 Debentures, did not opt out.

11. and 12. - See p. 10

$27,000 opted out (not including $25,000 of the Rome objectants referred to hereafter). The owner of $1,000 said she would not sell a $1,000 bond for $844.16.

Out of 585,386 shares of publicly held common stock, the owners of 4,851 shares communicated with us, with the owners of 701 shares indicating acceptance, the owners of 3,271 shares opting out, and one owner of 1,050 shares objecting.

Out of 349,467 publicly held Warrants, the owners of 9,070 communicated with us, all of whom indicated acceptance.

On September 27, 1976, Morton P. Rome and Marjorie T. Rome, as Trustees, claiming to own $25,000 principal amount of 5-1/2% Convertible Debentures (without indicating when they were acquired), served us with a notice of objection and a 51-page Brief opposing the settlement as to the Convertible Debentures.

The bone of the Brief is the claim that the Constitution of the United States, the corporate laws of the States of New York, Pennsylvania and Delaware, the Federal Rules of Civil Procedure and the Federal securities laws, guarantee the conversion right for the life of the Convertible Debentures.

But since INDIAN HEAD has the right to voluntarily redeem the Convertible Debentures for $1,033, objectants must be contending that, as a matter of law, INDIAN HEAD cannot merge, for cash, unless it first redeems, or guarantees the conversion right until 1993, at the voluntary redemption price.

Piercing the bone to its marrow, this 51-page

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11. Warrant owners on August 2, 1976 and on the Merger Date will receive $2.50; those who have also owned continuously since July 2, 1974 will receive $4.
12. The month following the delisting of the Convertible Debentures and the Common Stock from the N.Y.S.E. The Convertible Debentures and Common Stock were then traded over the counter; the Warrants, on the American Stock Exchange.

Brief boils down to the argument that, by definition, anything less than $1,033 is unconstitutional and unlawful -- therefore, $844.16 must be unfair as a matter of law. Thus, Objectants would obligate plaintiffs to litigate to the end and deny this Court the power to ever approve a settlement which offers the Debentures less than $1,033. Nowhere in Objectants' 51-page Brief do they explain how they reconcile this claim with the fact that the INDENTURE permits a merger, and that the conversion right is subject to the rights possessed by Common Stockholders immediately before a merger. The governing provision of the INDENTURE, in Section 5:06, provides:

> "In case of any consolidation of the Company with or merger of the Company into another corporation, or in case of any sale or other disposition of all or substantially all the property of the Company as an entirety to any person, the corporation resulting from such consolidation or such successor or acquiring person, as the case may be, shall execute and deliver to the Trustee a supplemental indenture, in form satisfactory to the Trustee, providing that the holder of each Debenture then outstanding shall have the right thereafter to convert such Debenture into the kind and amount of shares of stock and other securities and property receivable upon such consolidation, merger, sale, lease or other disposition by a holder of the number of shares of Common Stock of the Company into which such Debenture

> might have been converted immediately prior to such consolidation, merger, sale or other disposition. Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article Five. The provisions of this Section shall similarly apply to successive consolidations, mergers, sales or other dispositions. Notice of the execution of such a supplemental indenture shall be given in accordance with the provisions of Section 12.02."
>
> (Emphasis supplied.)

Under the settlement, the Convertible Debenture is guaranteed the Section 5:06 contract right to the same benefits that flow to the common stockholder from the cash merger. That guaranty runs for the life of the Indenture through 1993. If a Convertible Debenture owner does not elect to accept $844.16 today, he can retain his Convertible Debenture and receive 5-1/2% interest. But he can change his mind at any time, and convert for the cash equivalent of the $32 per share that the Common Stock is receiving in the cash merger.

By analogy and by principle, Objectants argue that the conversion right certainly and absolutely survives a merger. Our problem is not with the argument -- we pleaded it in both our Amended Complaints -- but with the certainty.

The short of Objectants' long Brief seems to be that the INDIAN HEAD Convertible Debenture owners' right to conversion is so fixed, so certain, so unquestionable, that a settlement, in a cash merger, for a farthing less than the redemption price is unconstitutional, as well as unfair. We submit

that to state the proposition is to reject it.

Our accompanying Memorandum of Law, written before the objections were received, demonstrates, we think with certainty, the uncertain prospects of this position. Although fairness comes in many colors, if there is any certainty in this case, it is that $844.16 for the INDIAN HEAD $1,000 5-1/2% Convertible Debenture is fair. That judgment is fortified by the opinion of one of the world's leading investment bankers, L. F. Rothschild & Co., which owns $599,000 principal amount of Debentures and whose letter to that effect is reproduced on the following page.

At the hearing, we will furnish a more detailed response.

HISTORY IN DETAIL

These three actions, with their seven complaints, were first spawned by TBE's purchases of INDIAN HEAD Common Stock -- the Tender Offer Stage -- and then rekindled and redirected by its proposed merger of INDIAN HEAD -- the Merger Stage. The issues they present are so obviously legal that, at the time of the Aborted Merger, all the parties had pending sub judice, motions for summary judgment, or to dismiss the Complaints. The central facts upon which those motions were based are conceded by defendants,[13] are basically in the public record, and are as follows:

13. Annexed as Exhibit C is a copy of the Brucker Plaintiffs' Proposed Findings of Fact, prepared for the Preliminary Injunction hearing which include the pertinent portions of the Debenture Indenture and the Warrant Agreement, breaches of which were alleged in the Brucker Amended and Second Amended Complaints and in the Shamrock Amended Complaint.

661a

L. F. ROTHSCHILD & CO.
MEMBERS NEW YORK STOCK EXCHANGE, INC.

99 WILLIAM STREET
NEW YORK, NEW YORK 10038
(212) 425-3300
CABLE ADDRESSES: "PROBATICA" OR "ELEFAR"

August 24, 1976

Mr. William Klein II
Austrian, Lance & Stewart
630 Fifth Avenue
New York, New York 10020

Dear Bill:

L. F. Rothschild & Co. holds 599 Indian Head 5 1/2%-93 convertible debentures, and 499 shares of common stock. We have reviewed the proposed settlement and feel that it is fair, appropriate and desirable.

We would like to specifically point out however, that we along with all sophisticated investors are particularly conscious of the rate of return which we receive on our money. An adequate rate of return, as you know, is a function of both the gains received and the amount of time necessary to receive those gains. In this particular instance while the gains are substantial in total dollar amounts they become only meaningful to individual stockholders or debenture holders if they are, in fact, received in a meaningfully prompt manner.

I would like to respectfully urge you to do whatever you can to make it possible that the legal machinery moves as expeditiously as possible. A delay of a month or two can reduce the real economic benefit which stock holders and note holders are receiving. Consequently, anything you can do to facilitate the receipt of the payment will be greatly appreciated.

Sincerely yours,

Alan B. Slifka
ls

STAGE ONE - THE TENDER OFFERS.

A. THE FACTS:

1. INDIAN HEAD: One of Fortune 500's biggest companies, Indian Head, Inc. is a diversified company with assets of over 300 million dollars and annual sales of more than 400 million dollars derived from containers, metal and automotive products, utilities and communications products, and information technology.

2. TBE: Defendant TBE is an international industrial holding company with headquarters in Amstelveen, the Netherlands, and its activities include large-scale shipbuilding, transportation, distribution of natural gas, building materials production, storage, trans-shipment and transportation of bulk cargoes, chemicals and liquid gases, and the manufacture of agricultural machinery tools and sorting and packaging machinery.

3. MEMORANDUM OF UNDERSTANDING: On September 19, 1973, INDIAN HEAD entered into a Memorandum of Understanding with TBE which included INDIAN HEAD commitments to "cooperate with TBE in making a successful offer for a public tender" of INDIAN HEAD Common Stock ("SHARES") and to sell to TBE 750,000 shares of its authorized but unissued Common Stock, at the $27 per share tender price; and INDIAN HEAD made its stockholder list available to TBE.

4. 1973 TENDER OFFER: On September 27, 1973 TBE offered to buy a minimum of 1,100,000 SHARES at $27 per share. In the Offer to Purchase and in the accompanying filings

required by §13(d) and Regulation 13D of the Securities Exchange Act of 1934, TBE disclaimed a present intention to acquire control of INDIAN HEAD. The Offer to Purchase disclosed that if TBE acquired more than 32%, the Common Stock might ultimately be delisted from the New York Stock Exchange.

5. SUCCESS: The 1973 TENDER OFFER was oversubscribed; TBE acquired 1,213,619 SHARES (plus the 750,000 SHARES sold by INDIAN HEAD), for more than $50,000,000, and became INDIAN HEAD's largest stockholder, owning approximately 33.9% of the Common Stock.

6. NEW INDIAN HEAD DIRECTORS: On October 24, 1973, in accordance with the Memorandum of Understanding: [a] INDIAN HEAD elected to its Board of Directors, defendants Gerard B. Huiskamp, Chairman of TBE's Board of Management ("HUISKAMP") and Herbert E. Bachrach, a member of TBE's Board of Management and director of its Corporate Planning and Development ("BACHRACH"), naming HUISKAMP to its Executive and Finance Committees, and BACHRACH to its Compensation Committee; [b] TBE named to its Supervisory Board defendant James E. Robison ("ROBISON"), who was INDIAN HEAD's former president, a Director and Chairman of its Finance Committee, and the owner of 263,152 shares of INDIAN HEAD Common Stock.

7. $50,000,000 LOAN: On December 19, 1973, when ROBISON was on the Boards of both companies, and HUISKAMP and BACHRACH were also INDIAN HEAD Directors, TBE arranged to obtain up to a maximum of $50,000,000 to be supplied by long-

term borrowings pursuant to a long-term borrowing facility in the form of a seven year multi-currency revolving credit agreement with The Chase Manhattan Bank, N.A. and fourteen other banks located outside the United States. (Seven months later these arrangements enabled TBE to finance the 1974 TENDER OFFER).

8. 1973 ANNUAL REPORT: In January 1974, INDIAN HEAD's 1973 Annual Report was sent to the Convertible Debenture owners, containing this reference on page 3 of the President's Letter, to the 1973 TENDER OFFER:

> "THYSSEN-BORNEMISZA GROUP, N.V. During the last quarter of 1973, Indian Head established an important relationship with a major industrial firm in Europe. In October, the Thyssen-Bornemisza Group, N.V. (TBG), a Netherlands-based industrial firm, acquired 1.2 million shares of Indian Head common stock at $27 per share through a tender offer. An additional 750,000 shares of common stock, also at $27 per share, were sold to TBG directly by Indian Head. This new relationship could lead to mutually beneficial business opportunities here and abroad."

(The Annual Report did not mention the $50,000,000 financing arrangements or either the forthcoming 1974 TENDER OFFER, or even the possibility thereof).

9. JULY 1, 1974 MARKET PRICES: On July 1, 1974, the day before trading in INDIAN HEAD securities was suspended, the market prices were: Convertible Debentures - $65 (per $100); Common Stock - 23-1/4; Warrants - 4-3/4.

10. 1974 TENDER OFFER: On July 12, 1974, TBE

made a tender offer to buy all the INDIAN HEAD Common Stock at $27 per share, and all INDIAN HEAD Warrants to purchase Common Stock at $2 (later increased to $2.25) per Warrant, mailing an Offer to Purchase to each Common Stockholder of record, to each Warrant holder of record, and to employees owning Stock Options. (Neither the Warrant owners nor the employees had exercised their respective rights to buy Common Stock.)

11. 1974 TENDER OFFER DISCLOSURES: The 1974 Offer to Purchase disclosed: TBE expected to purchase a substantial majority of the Common Stock and thereby acquire control of INDIAN HEAD; that, as a result of the 1974 Tender Offer, the Common Stock might no longer meet the requirements of the New York Stock Exchange for continued listing and the Exchange might therefore delist the shares; INDIAN HEAD's Board of Directors and Management proposed to tender between 332,524 and 437,824 of their shares; the December 19, 1973 $50,000,000 loan arrangements. (They were, of course, concluded only eleven weeks after TBE had represented in the 1973 Tender Offer:

> "Except to the extent described above, it is not the present intention of TBE to acquire control of Indian Head by means of these transactions.")
>
> (Emphasis supplied.)

12. FAILURE TO NOTIFY DEBENTURE OWNERS: No notice of the 1973 or 1974 Tender Offers was sent or mailed to Brucker-Kaplan, Weinberger or the other registered Convertible Debenture holders.

13. SECOND SUCCESS: The 1974 Tender Offer ended on August 19, 1974, with TBE acquiring 3,687,000 more SHARES (for an additional purchase price of $99,549,000), so that it then owned approximately 5,600,000 SHARES out of some 6,100,000 SHARES outstanding, or approximately 90.6%. INDIAN HEAD officers and directors sold to TBE approximately 545,000 of their own SHARES for approximately $14,715,000 in cash.

14. STOCK AND DEBENTURE DELISTING: On August 30, 1974 INDIAN HEAD's Common Stock and Convertible Debentures were suspended from trading on the New York Stock Exchange; delisted on September 24, 1974; and thereafter have been traded on the over-the-counter market.

15. TENDER DEBENTURE VALUES: The $27 per share price for the Common Stock in the 1973 and 1974 Tender Offers was equal to a value of $701.30 for each $1,000 Debenture, if converted.

16. POST-TENDER MARKET PRICES: From October 1, 1974 to February 11, 1976, the market prices for the Common Stock, Convertible Debentures and Warrants were in the range of $15 - $22 for the Common Stock, $45 - $58 for the Convertible Debentures and $2 - $2.50 for the Warrants.

B. THE PLEADINGS.

The original class action complaints in all three captioned actions were based upon the foregoing facts, and made the following claims:

14.

BRUCKER-KAPLAN: Three Federal claims were under the Williams Act (§14(d) and (e)) and under §10(b) and Rule 10b-5 alleging that the failure to send Convertible Debenture owners notice of the TENDER OFFERS violated the Williams Act and was an unlawful manipulative practice; and that TBE's acquisition of control constituted a constructive merger in violation of the Indenture pursuant to which the Convertible Debentures had been issued (the "INDENTURE"). The fourth claim, under common law, alleged that the defendants violated their fiduciary obligation to the Convertible Debenture owners. On March 4, 1975 we moved for summary judgment and class action certification; defendants cross-moved to dismiss the complaint, to which we replied, and these motions were sub judice when our Amended Complaint was filed on February 20, 1976.

15.

WEINBERGER: In a single Federal claim, plaintiff alleged that if plaintiff had received notice of the tenders he would have converted and that the failure to send the Convertible Debenture owners notice of the TENDER OFFERS and the delisting of the Common Stock violated the Williams Act and §10b and Rule 10b-5. (Two paragraphs of the Complaint were amended on June 3, 1975). On June 2, 1975 defendants moved to dismiss the complaint or for summary judgment; plaintiff then cross-moved, and these motions were sub judice when the merger proposal was made and withdrawn.

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14. Our Brucker-Kaplan Docket Sheet is annexed as Exhibit D.

15. The Weinberger Docket Sheet is annexed as Exhibit E.

SHAMROCK[16]: Shamrock made Federal claims under the Williams Act and §10b and Rule 10b-5, on behalf of Warrant owners, that the TENDER OFFERS were untrue and misleading, and claimed under the common law that defendants had breached their obligations to Warrant owners. On June 3, 1975, defendants moved under F.R.C.P. 9(b) to dismiss the complaint and that motion was denied on October 9, 1975. On February 2, 1976 defendants moved under F.R.C.P. Rule 12(b)(6) to dismiss the complaint or for summary judgment; that motion was sub judice when Shamrock filed its Amended Complaint on March 4, 1976.

STAGE TWO - THE ABORTED MERGER.

A. FACTS:

1. MERGER PROPOSAL: On February 12, 1976, TBE announced that it intended to cause the merger of INDIAN HEAD into an affiliate on March 19, 1976, as follows:

(a) Common Stock - the Common Stock would be paid $30 cash per share, (compared to the $27 TENDER OFFERS);

(b) Debentures - After the merger, a Convertible Debenture (which had 17 years remaining until expiration in 1993) could be surrendered for $779.22 cash (compared to the $701.30 TENDER OFFERS conversion value), or, alternatively, held until maturity in 1993, without the conversion right but earning the regular interest payments;

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16. The Shamrock Docket sheet is annexed as Exhibit F.

(c) Warrants - Since the $30 exercise price of the Warrants (which had 14 years remaining until expiration in 1990) was the same as the $30 being offered for the underlying Common Stock, the owners of Warrants would receive nothing.

2. HISTORICAL MARKET PRICES: Since the issuance of the Warrants in 1965 and of the Convertible Debentures in 1968, the Warrants have traded as high as $30 on the American Stock Exchange, and the Common Stock and Convertible Debentures, on the New York Stock Exchange, as high as $46-1/2 and $1,290, respectively.

3. PRE-MERGER MARKET PRICES: On February 11, 1976, the day before the merger announcement was published, the high and low prices for the Warrants on the American Stock Exchange were 2 to 2-1/8, and for the Common Stock and over-the-counter, 23-5/8 to 24. The latest pre-merger Convertible Debenture quotation is for February 5, 1976, when the Bid was 61 and the Ask 65.

4. BRUCKER-KAPLAN AMENDED COMPLAINT: On February 20, 1976, my firm, as attorneys for plaintiffs Brucker and Kaplan, representing the Debenture, Warrant and Common Stock classes, sued to restrain the merger, and on February 23, 1976, obtained an order to show cause, returnable in this Court on March 4, 1976, why the merger should not be enjoined.

5. MERGER WITHDRAWAL: On March 4, 1976, at the opening of our preliminary injunction hearing, defendants

announced that the merger plan was withdrawn and that they would make a good faith effort to settle our litigation, and the other two cases.

6. SETTLEMENT: Agreement on the basic terms of the SETTLEMENT for payments to the class members was reached on May 3, 1976; the SETTLEMENT AGREEMENT was signed on July 20, 1976 by us and WEINBERGER counsel, and by SHAMROCK counsel on July 28, 1976.

B. THE SECURITIES INVOLVED:

1. POST-1970 MARKET PRICES: The market prices of the Common Stock, Convertible Debentures and Warrants since 1970 are shown on the table on the following page.

INDIAN HEAD COMMON STOCK[1], WARRANTS[2] AND CONVERTIBLE DEBENTURES[1]

MARKET PRICES[3] AND VOLUME

		1970	1971	1972	1973	1974	1975	1976[6]
INDIAN HEAD COMMON STOCK[4]	Hi	26	33.5	30.3	27.4	27.5	21 1/4	31 1/4
	Low	14	24.6	22.4	15.2	13.5	16.5	25.5
	Last	26	28.2	25.6	17.3	19	20.5	31 1/4
	Volume (000)	599.3	1,125.6	1,140.3	776.3	538.3	143.8	97.01
INDIAN HEAD WARRANTS DUE MAY 1, 1990[4]	Hi	11.2	16	14.5	11	6	1 3/4	2 5/8
	Low	5.4	9	3.4	3.7	5/8	7/8	1 1/8
	Last	10	12.1	3.7	4	3/4	1 1/4	2 1/4
	Volume (000)	189.4	386.4	371.7	189.8	221.2	79.1	93.3
CONVERTIBLE DEBENTURES DUE MAY 15, 1993[4,5]	Hi	83.1	97.1	96.4	37.5	71	61	82.5
	Low	59.1	83	99.4	61.4	53	55	56.5
	Last	83.1	89	30	63.3	59	58.5	81 1/4
	Volume ($000)	5,353	56,254	6,291	2,338	3,525	20,402.5	1,658

1. New York Stock Exchange
2. American Stock Exchange
3. Source: Dow Jones Investor's Handbook, Dow Jones Books, Princeton, New Jersey (annual editions, published in following year, i.e. 1970 prices appear in 1971 volume)
4. Fractions are in eighths.
5. Although issued in $1,000 denominations, the Convertible Debentures are quoted in tenths on the basis of 100.
6. As of August 31, 1976.

2. COMMON STOCK: 672a

(a) Approximately 5,425,000 Shares were issued and outstanding on September 27, 1973 (with 649,350 additional Shares reserved for issuance pursuant to the Debenture conversion privilege);

(b) Each share is entitled to one vote and was listed on the New York Stock Exchange continuously from prior to April 1, 1965 to August 30, 1974, when trading was suspended, and the Shares were thereafter delisted;

(c) 585,386 Shares are now publicly outstanding.

3. WARRANTS:

(a) The Warrants were first offered in 1965, in an original issue of 400,000 Warrants, as part of an offering of $20,000,000 of debentures, pursuant to a Prospectus which represented that the Common Stock was listed on the New York Stock Exchange and that application had been made for listing the Warrants on the American Stock Exchange;

(b) Each Warrant is issued pursuant to the Warrant Agreement with the Chemical Bank of New York as Warrant Agent ("CHEMICAL"), and entitles the holders through May 15, 1990 to purchase one share of Common Stock, or an aggregate of 400,000 shares, at the following exercise prices: $20 per share if exercised before the close of business on May 15, 1970; $25 per share to May 15, 1975; $30 per share to May 15, 1980; $35 per share to May 15, 1985; and $40 per share to May 14, 1990;

(c) 384,554 Warrants are now outstanding, of

which 35,082 are owned by TBE.

(d) The Warrants were continuously listed on the American Stock Exchange from May, 1965 until trading was suspended on or about February 11, 1976, when the Merger Plan was announced. The suspension was lifted on or about March 5, 1976, when the Merger Plan was withdrawn.

4. DEBENTURES:

(a) In April, 1968, the Debentures were offered to the public in the principal amount of $25,000,000 pursuant to a Prospectus which represented that INDIAN HEAD had applied for their listing on the New York Stock Exchange and that the Common Stock reserved for issuance upon conversion had been listed on the New York Stock Exchange. Under § 5:08 of the INDENTURE:

> "The Company further covenants that, at any time when the Common Stock of the Company is listed on the New York Stock Exchange, or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of Common Stock issuable upon conversion of Debentures."

The Debentures were listed on the New York Stock Exchange when issued, and that listing was retained until suspension on August 30, 1974, and delisting on September 24, 1974;

(b) Each Debenture is issued in denominations of $1,000; is registered in the name of the owner thereof; is part of an original issue in the aggregate principal

amount of $25,000,000; and is subject to the terms and conditions of the INDENTURE, with MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK as Trustee ("MARINE");

(c) All of the Debentures were outstanding until about July 12, 1974; approximately $10,707,000 principal amount were converted during the 1974 Tender Offer, and $14,293,000 are now outstanding;

(d) Each Debenture is convertible at any time, at the option of the owner, into 25.974 shares of Common Stock.

(e) Each Debenture is redeemable, at INDIAN HEAD's option, according to a redemption schedule on the back of the Debenture, the 1976 rate being 103.3% or $1,033.00;

(f) The INDENTURE requires that notice to each Debenture owner be mailed to him at his last address appearing on the registration books of INDIAN HEAD;

(g) In the event of default, the principal amount of the Debenture, with accrued interest, becomes immediately due and payable. (Indenture - § 8:01(d))

C. THE PLAINTIFFS.

The Brucker Second Amended Complaint alleges that plaintiffs BRUCKER and KAPLAN, as Trustees, own $11,000 of Debentures; plaintiffs HUSKEY and STRATTON own 3,100 and 6,000 Warrants, respectively; and plaintiff NORTE & CO. owns 32 shares of Common Stock. Shamrock's Amended Complaint alleges that plaintiff SHAMROCK owns 6,000 Warrants and 100 shares of Common Stock. The Weinberger Complaint alleges

that plaintiff WEINBERGER owned $10,000 of Debentures from April 18, 1968, until sold on or about July 23, 1974, and $5,000 of Debentures on February 25, 1974, until sold on July 18, 1974.

D. THE DEFENDANTS.

Individual Defendants: The individual defendants are the officers---directors of INDIAN HEAD; the two TBI directors on INDIAN HEAD's Board of Directors; L. EMERY KATZENBACH, a director of INDIAN HEAD's investment advisor, WHITE, WELD & CO., INC., and a former INDIAN HEAD director; H. H. THYSSEN-BORNEMISZA, who controls TBE; and TBE's Deputy Chairman, R. L. GENILLARD, who was a WHITE WELD director and is Vice Chairman of the Board of WHITE WELD's parent company.

Corporate Defendants: The corporate defendants, in addition to INDIAN HEAD, TBE and two TBE affiliates, are MARINE, the Trustee for the Debentures, CHEMICAL as Warrant agent, and INDIAN HEAD's investment advisor, WHITE, WELD & CO., INC.

E. THE PRESENT PLEADINGS.

The withdrawal of the February 12, 1976 Merger Proposal mooted the BRUCKER-KAPLAN Amended Complaint. Accordingly, while settlement negotiations were in the preliminary stages, we served upon the defendants, with a copy to the Court, but without defendants' consent or Court order, a "Second Amended Complaint." The defendants refused to accept, and returned it. It was then edited

and, in connection with the settlement, filed, with the defendants' consent, as the Second Amended Complaint.

BRUCKER Second Amended Complaint: Three additional plaintiffs have been added: warrant owners CECIL G. HUSKEY and W. T. STRATTON, and common stockholder NORTE & COMPANY.

The Second Amended Complaint invokes §10b and Rule 10b-5 of the Securities Exchange Act of 1934 against the allegedly manipulative effects of the delisting of the Common Stock and Convertible Debentures and the making and withdrawal of the merger proposal. The Williams Act is invoked with regard to the failure to give notice of the Tender Offers to the owners of Convertible Debentures. The conduct of all defendants is alleged to breach their fiduciary obligations to the security holders under the common law, for which pendent jurisdiction applies.

The relief requested is to require the defendants to liquidate all of the outstanding securities of all classes by paying to the owners their aliquot interest in INDIAN HEAD.

In essence, the twelve claims of the Second Amended Complaint are:

1. Claims FIRST, SECOND, FOURTH - SIXTH apply to all four Classes:

(a) The aborted merger had no business purpose and was a manipulative device enabling TBI to acquire all INDIAN HEAD securities at discount prices (FIRST CLAIM);

(b) The withdrawal of the merger conditioned the market, destroying its viability as a reflector of values (SECOND CLAIM);

(c) Although owning 90.6% of INDIAN HEAD Common Stock, TBE acted as if it owned 100%, in violation of the rights of the minority security holders (FOURTH CLAIM);

(d) The Tender Offers constituted a conspiracy, which had its consummation in the aborted merger, to buy control of INDIAN HEAD at below fair value; the Tender Offer prices and the 1974 Tenders for the Warrants were unfair; and the conspiracy was designed to freeze out all owners of securities (FIFTH CLAIM);

(e) INDIAN HEAD, having committed itself to all its security holders, to list the Common Stock and Convertible Debentures on the New York Stock Exchange, and the Warrants on the American Stock Exchange, and maintain those listings, the delistings constituted a breach of INDIAN HEAD's express and implied contracts with the members of all Classes (SIXTH CLAIM).

2. Claims THIRD and SEVENTH through ELEVENTH involve the Debentures alone:

(a) The merger plan constituted a redemption of the Debentures at $1,033 and was irrevocable because TBE alone controlled its making and withdrawal (THIRD CLAIM);

(b) The delisting of the Common Stock breached INDIAN HEAD's obligation to keep listed the stock into which the Debentures were convertible (SEVENTH CLAIM);

(c) Since August 9 1974, the owners of the Debentures have been the economic captives of TBE, and the merger and its withdrawal were manipulative devices to depress the market and freeze out the Debentures (EIGHTH CLAIM);

(d) INDIAN HEAD's breaches of the INDENTURE resulted in its being in default, and the INDENTURE prohibits a merger where INDIAN HEAD is in default (NINTH CLAIM);

(e) MARINE, as Trustee under the INDENTURE, breached its fiduciary obligation to the Debenture owners by not giving them notice of the Tender Offers (TENTH CLAIM);

(f) Defendants violated the Williams Act in not giving the Debenture holders notice of the Tender Offers (ELEVENTH CLAIM).

3. The TWELFTH Claim involves the Warrants alone: The Aborted Merger constituted an anticipatory breach of the Warrant Agreement, which did not permit such a merger (TWELFTH CLAIM).

THE SHAMROCK AMENDED COMPLAINT: Shamrock's Amended Complaint, filed on March 4, 1976, the day the aborted merger was withdrawn, contains five claims on behalf of Common Stockholders as well as Warrant owners. First, under the

Williams Act and 10b and 10b-5, Shamrock alleges both tender offers were part of a fraudulent scheme to obtain control of INDIAN HEAD and to impair the values of the Common Stock and Warrants. Second, under §10b, the proposed merger has no business purpose and will render the Warrants valueless; third, under 10b and the Williams Act, the defendants fraudulently used inside information to determine whether and when to make the second tender offer; the fourth claim is under the Common Law for breach of defendants' fiduciary duties; and the fifth claim seeks a declaratory judgment that the proposed merger constitutes an anticipatory breach of the Warrant Agreement. In addition to damages, Shamrock asks that TBI divest itself of all INDIAN HEAD Common Stock and Warrants through a public offering with the excess over $27 for the Common Stock and $2.25 for the Warrants to be paid to INDIAN HEAD and those who tendered.

THE WEINBERGER AMENDED COMPLAINT: The Weinberger Amended Complaint, dated June 3, 1975, is summarized at page 18, supra.

DISCOVERY

The two separate stages of this litigation resulted in two separate discovery efforts:

First came the two Tender Offers: The Convertible Debenture holders had no notice, and BRUCKER and WEINBERGER theretofore filed their Complaints. The 1974 Tender Offer offered $2.25 to the Warrants, when the market had been $4.75, and the SHAMROCK Complaint ensued.

The two Tender Offers and the three lawsuits presented no real factual disputes. As the swift summary judgment motions indicated, the basic issues were legal: Did the defendants have an obligation to notify the Convertible Debenture owners of the Tenders? Did the 1974 Tender Offer represent a manipulative device by the defendants to impair the value of the Warrants? Underlying both, was whether the delisting of the Common Stock from the New York Stock Exchange was legally actionable by the Debenture and Warrant owners. Damages to the Convertible Debenture owners were measurable by the conversion value of the $27 per share tender, a mathematical calculation which did not require discovery.

Accordingly, from the moment we served the BRUCKER-KAPLAN Complaint on December 31, 1974, until the Aborted Merger was announced, it was my view that as to liability, the Convertible Debenture action was a summary judgment case. Despite the fact that class action summary judgment motions are rarely granted in this District, we were so convinced that this case was an exception that we made our summary judgment motion two months after the Complaint was filed and before any answers had been served. Our supporting papers consisted of:

the Tender Offer papers and exhibits required to be filed under the '34 Act;

the 100-page Debenture INDENTURE;

the affidavits of Debenture owners as to their lack of notice;

the 13-page affidavit of our expert witness, Martin J. Whitman, who analyzed the financial and economic implications of the failure to give the Debenture owners notice of the Tenders, thereby depriving them of the $21.30 conversion opportunity.

In view of our belief that defendants were per se liable, we saw no reason for discovery by way of deposition[17] or interrogatories. There was nothing that INDIAN HEAD or TBE could say, nor anything that their books and records might show, which would, in our view, alter their obligation to notify the Convertible Debenture owners of the Tender Offers.[18]

Although not essential to summary judgment against INDIAN HEAD, or its majority stockholder, TBI, the role of MARINE as Trustee under the INDENTURE could only be explored through deposition or interrogatory. Accordingly, we deposed a MARINE officer in order to determine what part, if any, MARINE played in the failure to notify the Debenture owners of the Tender Offers; and, in that context, obtained copies of correspondence with Debenture holders.

Similarly, with respect to the SHAMROCK Warrant claim, the facts were clear enough: the high price for the Warrants the day before trading was suspended was $4.75; the Tender Offer was for $2.25 and disclosed that the Common

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17. Weinberger did notice depositions, but they were stayed.

18. Our approach was further fortified by the 2nd Circuit opinion in Van Gemert v. Boeing (520 F.2d 1373, cert. den. 46 L.Ed.2d 282 (1975)) [discussed in our accompanying Memorandum of Law], decided shortly after our summary judgment motion became sub judice, and which required notice of redemption to every Convertible Debenture owner because the economic value of the Debenture was materially affected by redemption of which the owner had no notice.

Stock would probably be delisted.

The Warrants were originally issued in connection with a $20,000,000 bond financing which represented that the underlying Common Stock would be listed on the New York Stock Exchange. Accordingly, as with the Convertible Debentures, the Warrant issues were only legal: Did Warrant owners who neither bought nor sold have standing? If so, were the defendants, as a matter of law, liable for impairing the value of the Warrants as a result of a tender below market and the delisting of the Common Stock, whose stock exchange listing was at the heart of the marketability of the Warrants?

The BRUCKER, WEINBERGER and SHAMROCK Complaints, and all of the pending motions, were mooted by the February 12, 1976 merger proposal. It converted this litigation from a "No Notice" fraudulent misrepresentation case, to one involving the major class action issue of 1976: the freeze out of minority stockholders.

Although the facts once more were a matter of public record, new legal issues were created: Did TBI have the legal right to merge? If so, were the merger terms unfair as a matter of law?

We learned of the merger proposal on February 12, 1976, a few hours after it was published. We then spent virtually all of the next eight days and nights in discovery,

which took three basic forms: documentary, expert opinions and my own independent investigation of custom and usage in the industry. In preparation for the hearing, we served a Request to Produce, to which defendants responded and we and the defendants adopted an Agreed Statement of Facts on most matters.

As a result of that investigation, we concluded once more that the issues were legal, not factual, and that neither depositions, interrogatories, nor non-public documentary production were necessary or desirable.[19] Although the directors and officers, trustee, agent, investment advisor and their principal associates were joined as defendants, TBE was the target, TBE would pay a judgment on a settlement, and all other defendants were ancillary to the cause of action and the ultimate responsible party.[20] In my opinion, this case would be won or lost on the law, against TBE. Values would be largely dependent upon expert testimony, except that the Convertible Debenture default claims were circumscribed by either the $1,000 face amount, plus interest, or the $1,033 redemption price.

That is still my view.

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19. In all candor, I reached this conclusion with some reluctance, since every case I have had required some discovery of defendants. In Blank v. Talley alone, supra, we had 70 days of depositions, more than 700 exhibits and 5,000 pages of testimony. But unnecessary discovery can be counter-productive, and that was my conclusion here.

20. The U.S. Supreme Court's recent Hochfelder decision, referred to in our accompanying Memorandum of Law, appears to make their liability virtually nil.

DOCUMENTARY DISCOVERY: We made an exhaustive examination of the INDIAN HEAD material furnished pursuant to our Request to Produce, and the many public documents, including INDIAN HEAD's documentary and financial records since 1965 (when INDIAN HEAD first offered 400,000 Warrants pursuant to a Prospectus as part of a $20,000,000 public offering of Subordinated Debentures). In addition to analyzing and evaluating:

> The Registration Statement and Prospectuses for the original issues of Debentures and Warrants;
>
> The 100-page Debenture INDENTURE and WARRANT AGREEMENT and the Statutory Tender Offer material,

the records examined included:

> The New York Stock Exchange and American Stock Exchange Listing Agreements relating to the Common Stock, Debentures and Warrants and the respective rules and regulations of those Exchanges;
>
> The annual, quarterly and monthly INDIAN HEAD SEC filings since 1965:
>
> SEC officer-director forms 3 and 4 filings;
>
> INDIAN HEAD's Annual and Quarterly Reports from 1965 on;
>
> Stock Market quotations for all INDIAN HEAD securities since 1965, and reports on INDIAN HEAD by Standard & Poor and other research and brokerage firms;
>
> INDIAN HEAD directors and executive committee meetings and minutes from August 21, 1973 through December 16, 1975.

One result of our discovery was the preparation of separate Convertible Debenture and Warrant Exhibits, for the Preliminary Injunction hearing, containing extracts

from the pertinent documents relating to INDIAN HEAD's commitment to list the Common Stock underlying the Convertible Debentures and the Warrants and the Convertible Debentures on the New York Stock Exchange, and to list the Warrants on the American Stock Exchange and the applicable rules of those Exchanges. Since these provisions are so central to the Debenture and Warrant allegations of the Amended Complaint, they are reproduced on the following pages.

The principal documents which formed the basis of our study and which were compiled for submission at the preliminary injunction hearing (including proposed Findings of Fact), are listed in Exhibit G and are being simultaneously furnished to the Court in seven separate volumes.

EXPERTS: At the inception of BRUCKER-KAPLAN, we retained Martin J. Whitman, an established authority on mergers, acquisitions, securities and market values, to advise as to the economic impact on the registered owners of Convertible Debentures, of the failure to send them notice of the Tender Offers. During the litigation, he also furnished us with a series of opinions which are annexed as Exhibits H-1 and H-2. In addition, we consulted with Irving Brilliant, of Lehman Brothers, who was prepared to testify at the preliminary injunction hearing on the fair value of the Warrants.

INDEPENDENT INVESTIGATION: After the Aborted Merger announcement, the fair value of the Common Stock and of the Warrants became key issues. Therefore, I consulted

BEST COPY AVAILABLE

CONVERTIBLE DEBENTURES

Extracts from 1968 Prospectus and New York Stock Exchange Listing Agreement

PROSPECTUS - FACING PAGE

$25,000,000

Indian Head Inc.

5½% Convertible Subordinated Debentures due April 15, 1993

The Debentures are convertible at any time prior to maturity into Common Stock of Indian Head at a conversion price of $38.50 per share (equivalent to 25.974 shares per $1,000 principal amount of Debentures), subject to adjustment under certain conditions. On April 8, 1968, the closing price of the Common Stock on the New York Stock Exchange was $34.50 per share. The Debentures are subordinated to all existing and future Senior Indebtedness of Indian Head to the extent set forth under "Description of Debentures—Subordination".

Indian Head has applied for listing of the Debentures on the New York Stock Exchange.

[Emphasis supplied]

DESCRIPTION OF CAPITAL STOCK

The shares of Common Stock and Series A Preferred Stock of Indian Head presently outstanding are fully paid and nonassessable and are listed on the New York Stock Exchange. Shares of Common Stock reserved for issuance upon conversion of the Debentures have been listed on the New York Stock Exchange, subject to official notice of issuance, and will, when issued, be fully paid and nonassessable.

[page 24, Emphasis supplied]

Redemption Provisions

The Debentures will be redeemable at the option of Indian Head as a whole or in part at any time (provided that Indian Head is not in default in payment of any Senior Indebtedness) on not less than 30 days notice, at the following redemption prices (expressed in percentages of principal amount), together with interest accrued to the redemption date, if redeemed during the 12-month period beginning April 15 of the years indicated below:

1968	105.50%	1978	102.75%
1969	105.22%	1979	102.47%
1970	104.95%	1980	102.20%
1971	104.67%	1981	101.92%
1972	104.40%	1982	101.65%
1973	104.12%	1983	101.37%
1974	103.85%	1984	101.10%
1975	103.57%	1985	100.82%
1976	103.30%	1986	100.55%
1977	103.02%	1987	100.27%

and if redeemed after April 15, 1988, at 100%. (Sections 4.01 and 4.06.) [page 20]

Conversion Provisions

The holder of any Debenture shall have the right, at his option, to convert the principal thereof into shares of Common Stock of Indian Head at any time prior to maturity at the conversion rate set forth on the cover page hereof, except that if a Debenture is called for redemption the conversion right shall terminate on the second business day before the redemption date. No adjustment in respect of interest or cash dividends shall be made upon the conversion of any Debenture. No fractional shares or scrip representing fractional shares shall be issued upon conversion. If the conversion results in a fraction, the market value of such fraction shall be paid in cash by Indian Head.

The conversion rate is subject to adjustment in certain events, including the issuance of stock of Indian Head as a stock dividend; sub-divisions, combinations and reclassifications of Common Stock; the issuance to holders of Common Stock of rights or warrants to subscribe for Common Stock at less than the current market price as defined for the purpose; or the distribution to holders of Common Stock of evidences of indebtedness, assets (excluding cash dividends) or rights or warrants to subscribe other than those mentioned above. Appropriate adjustments in conversion rights will also be made upon any consolidation of Indian Head with or merger of Indian Head into another corporation, or in case of any sale, lease or other disposition of all or substantially all the properties of Indian Head as an entirety. No adjustment in the conversion rate is required unless the adjustment would require an increase or a decrease of 1% in such rate, but any adjustments not made for that reason are required to be carried forward cumulatively. (Article Five.) [pages 21, 22, Emphasis supplied]

USE OF PROCEEDS

Of the $21,151,250 estimated net proceeds to Indian Head from the sale of the debentures offered hereby (the "Debentures"), approximately $6,500,000 will be used to repay short-term bank loans incurred to finance the $18,810,570 purchase of the 138,302 shares of common stock of Northwestern and the $2,000,000 purchase of an automotive parts business. $5,625,000 will be used to retire Indian Head's 6% Notes due 1968-1971 (including a current maturity of $1,500,000). If the merger with Northwestern is consummated, approximately $1,700,000 will be used to repay long term indebtedness of Northwestern. The balance will be available for general corporate purposes, including increased capital expenditures for expansion and improved efficiency of certain present operations and the continuance of Indian Head's acquisition program. (See "Management—Remuneration of Directors and Officers".) [page 3]

NEW YORK STOCK EXCHANGE

LISTING AGREEMENT

The Corporation will publish immediately to the holders of any of its securities listed on the Exchange any action taken by the Corporation with respect to dividends or to the allotment of rights to subscribe or to any rights or benefits pertaining to the ownership of its securities listed on the Exchange; and will give prompt notice to the Exchange of any such action; and will afford the holders of its securities listed on the Exchange a proper period within which to record their interests and to exercise their rights; and will issue all such rights or benefits in form approved by the Exchange and will make the same transferable, exercisable, payable and deliverable in the Borough of Manhattan in the City of New York. [§III, ¶4, Emphasis supplied]

The Corporation will promptly notify the Exchange of any corporate action which will result in the redemption, cancellation or retirement, in whole or in part, of any of its securities listed on the Exchange, and will notify the Exchange as soon as the Corporation has notice of any other action which will result in any such redemption, cancellation or retirement.

[§I, ¶10]

The Corporation will not make any change in the form or nature of any of its securities listed on the Exchange, nor in the rights or privileges of the holders thereof, without having given twenty days' prior notice to the Exchange of the proposed change, and having made application for the listing of the securities as changed if the Exchange shall so require.

[§I, ¶14]

EXTRACT FROM INDIAN HEAD, INC. MINUTES

Reg. Meeting, Board of Directors -
October 23, 1973

"He [Chairman POWERS] said that the New York Stock Exchange had agreed to approve the listing application for the 750,000 shares to be issued, but that the Exchange had indicated it expected TBG's equity interest in the Corporation would be reduced to 30% or less over the course of the next few years. He pointed out that the Exchange also expects to be consulted with respect to any transactions between the Corporation and TBG."

WARRANTS

Extracts from 1965 Prospectus and American Stock Exchange Listing Form

PROSPECTUS -- FACING PAGE

INDIAN HEAD MILLS, INC.

$20,000,000 5½% Subordinated Debentures, due May 15, 1990

With Common Stock Purchase Warrants For
400,000 Shares Common Stock
(Par Value $1 Per Share)

EACH DEBENTURE WILL HAVE ATTACHED A WARRANT TO PURCHASE TWENTY SHARES OF COMMON STOCK FOR EACH $1,000 PRINCIPAL AMOUNT THEREOF

The Warrant attached to each Debenture will be detachable and exercisable immediately, will expire May 15, 1990, and will entitle the holder to purchase Common Stock at a price of $20 per share through May 15, 1970, such price to be increased by the amount of $5 per share on May 16, 1970, and by an additional $5 per share each five years thereafter (subject to adjustment in certain events). It is expected that any market price quoted with respect to Warrants after the initial public offering will represent the market price of the right to purchase one share of Common Stock at the price specified in the Warrants, even though each Warrant confers the right to purchase more than one share. The Company intends to apply for listing of the Warrants on the American Stock Exchange.

NEW YORK STOCK EXCHANGE LISTING

The shares of Common Stock of the Company presently outstanding are listed on the New York Stock Exchange. Shares of Common Stock reserved for issuance upon the exercise of Warrants offered hereby will, when issued upon exercise of the Warrants as therein provided, be fully paid and non-assessable except as above provided. Application has been made for listing of such shares on the New York Stock Exchange. [page 17]

DESCRIPTION OF WARRANTS

Each Debenture upon initial issuance will have attached a Warrant entitling the registered holder thereof to purchase for cash a total of 20 shares of Common Stock of the Company for each $1,000 principal amount of Debentures. The Warrant Price will be $20 per share for the period ending May 15, 1970, $25 per share for the succeeding period ending May 15, 1975, $30 per share for the succeeding period ending May 15, 1980, $35 per share for the succeeding period ending May 15, 1985, and $40 per share for the succeeding period ending May 15, 1990, when the Warrants expire. The Warrants may be exercised, exchanged or transferred at any time by presenting them at the principal office of Chemical Bank New York Trust Company, the Warrant Agent. (Paragraphs 4, 6)

The number of shares which may be purchased upon exercise and the Warrant Price are subject to adjustment upon the issuance of stock of the Company as a stock dividend; subdivisions, combinations and reclassifications of the Common Stock; the issuance to holders of Common Stock of rights to subscribe for Common Stock at less than the current market price (as defined); or the distribution to holders of Common Stock of evidences of indebtedness, assets (excluding cash dividends paid out of earnings or surplus to the extent permitted under applicable state law), or rights to subscribe other than those mentioned above. In the event of certain mergers, consolidations or sales of assets, the holders of Warrants become entitled to receive, on exercise, the securities or properties which the holders of Common Stock received upon the occurrence of such event. (Paragraph 8) Reference is made to the Warrant Agreement between the Company and the Warrant Agent for a complete statement of such adjustments and other terms and conditions pertaining to the Warrants. The Warrant Agreement is filed as an exhibit to the Registration Statement and a copy may also be examined at the principal office of the Warrant Agent.

The Company intends to apply for listing of the Warrants on the American Stock Exchange.

[page 16, Emphasis Supplied.]

USE OF PROCEEDS

Of the net proceeds of the sale of securities offered hereby, approximately $6,525,000 (plus amounts presently held by the paying agent) will be used to redeem at $25 per share 143,252 shares of $1.25 Preferred Stock and 119,839 shares of $1.50 Preferred Stock, as listed under "Capitalization" above (see "Business and Properties—Pending Legal Proceedings"), and $6,500,000 will be used to prepay the outstanding bank notes, $4,500,000 of which were issued in January 1965 in connection with the acquisition of Crawford Manufacturing Company, Inc. The balance of approximately $6,300,000 (after deducting the estimated expenses of this offering) will be available for general corporate purposes, including increased capital expenditures for expansion and improved efficiency of certain present operations and the continuance of the Company's acquisition program.

[page 3]

WARRANTS

AMERICAN STOCK EXCHANGE LISTING FORM L

Listing Agreement No. 3 (see page 1) reads as follows:

"3. The Corporation will make prompt public disclosure of any material development in its affairs and operations, whether favorable or unfavorable, which might significantly affect the market for its securities or influence investment decisions."

Corporations today are increasingly aware of the need for timely disclosure to the public. A number of companies periodically review their information programs to insure that news is released promptly for the benefit of shareholders and the investing public.

[page 5]

at some length and on several occasions, personally and by telephone, with a knowledgeable former INDIAN HEAD employee who advised me as to INDIAN HEAD's business and its prospects. I also consulted the Merrill Lynch expert on the glass container business -- that being INDIAN HEAD's foremost activity -- with regard to INDIAN HEAD's present posture and prospects, and comparatively in competition with the other major glass container companies.

In addition, I supplemented the views of WHITMAN and BRILLIANT, with the opinions of market experts such as Alan Slifka of L. F. Rothschild Co.; plaintiff, Joseph C. Galdi, a client for more than twelve years, who is a long-time investment advisor, stock broker and certified public account; and Max Heine, a partner of Heine Fishbein & Co. and investment advisor to a former investment company client of ours, Mutual Shares Corporation. In particular, I inquired as to the custom and usage in the trade with regard to Warrants and Convertible Debentures, the nature of the Warrant and Convertible Debenture investments and the treatment of Warrants and Convertible Debentures in merger situations.

SETTLEMENT NEGOTIATIONS

Some months prior to the Aborted Merger, I met with defendants' counsel to explore settlement possibilities. These efforts proved fruitless. After the Aborted Merger, on the return date of our motion for preliminary injunction, March 4, 1976, the defendants announced that they were

withdrawing the merger. In addition, their counsel stated to the Court:

> ". . . Yes we did represent to Mr. Klein when we were conferring with him earlier, that we will sit down and make a good faith effort to attempt to settle this litigation and all the litigation involving these matters."
>
> [March 4, 1976 Transcript, p. 8, lines 14-18]

1. ARMS LENGTH NATURE OF THE NEGOTIATIONS: Two eminent law firms, Shearman & Sterling and Cravath, Swaine & Moore, opposed plaintiffs in this litigation. Shearman & Sterling, led by Robert F. Dobbin, an experienced litigator, and Arne Hovdesven, an equally experienced corporate lawyer, headed the defendants' negotiating team.

The negotiations had been preceded by over a year of hard fought litigation. Our summary judgment and class action motions were met by vigorous and extensive replies and counter-motions. The tenseness of these confrontations is evidenced in the Court record.

The fact that we moved for summary judgment within 60 days of filing the original complaint and moved to enjoin the merger eight days after it was proposed, evidences our vigorous effort to join issue and obtain a speedy trial. We were ready for a preliminary injunction hearing on March 4, 1976. And, when the merger was withdrawn and settlement negotiations were slow in getting started, we served a new "Second Amended Complaint," because our Amended Complaint had been mooted by the withdrawal of the merger proposal.

Since we had already exhausted our right to amend, the defendants returned our new "Second Amended Complaint", and we held off our application for the Court's consent to such filing, pending the outcome of the settlement talks. In addition, as the settlement negotiations dragged on, we were working on a new motion for summary judgment based upon our new "Second Amended Complaint."

We submit that this is a record of persistent and relentless arms length litigation, on all sides.

2. PREPARATION FOR NEGOTIATIONS:

(a) Generally: This is no ordinary fraud case. It does not involve huge losses where profits had been claimed, but rather the difficult and controversial legal issue of minority stockholder freeze-out. Two factors make the litigation and the settlement negotiations unusually complex.

First, Convertible Debentures and Warrants are each special types of securities. The Warrant is more in the nature of dice -- an out-and-out gamble; the Convertible Debenture is part debt, part equity. Both make for extra problems on top of the usual valuation difficulties.

Second, the merger of a publicly listed company into a private company, where all public security holders receive cash, means the end of public participation and their hopes for future growth and profit. No one who bought for more, often far more, than the merger payment, can ever be really satisfied. And even those who may end up with more than they paid are often bitter at the "loss" of huge profits which they imagined for the future. Such feelings are intensified when the security has a term of years -- as here,

seventeen more for the Convertible Debentures and fourteen more for the Warrants.

Our preparation for the preliminary injunction hearing was a helpful beginning for us to establish our settlement negotiating posture. We had reviewed in depth, with both Martin Whitman and Irving Brilliant, INDIAN HEAD's historical financial condition and its future prospects. Both advised that, in their opinion, the 1973 and 1974 $27 Tender Offers were fair. (That is what our original BRUCKER-KAPLAN Complaint asked for: the conversion equivalent of $27 per share of Common Stock.) And the fact that INDIAN HEAD's directors sold more than 500,000 of their shares for $27 each is another measure of the fairness of the $27 tenders.

Finally, both Whitman and Brilliant independently felt that although the 1976 Aborted Merger $30 Common Stock offer was not generous -- it was at the bottom line of fairness -- and not, in their opinion, unfair.

Prior to the beginning of settlement negotiations, I consulted with Mr. Whitman once more. He again reviewed the facts and advised that since he thought $30 was not unfair, anything more that we could settle for would be an extra benefit to the Class.

(b) Warrants: In preparation for the preliminary injunction hearing, Whitman and Brilliant, and Alan Slifka of L. F. Rothschild, and my broker-investment advisor client,

Joseph C. Galdi, were all of the opinion that:

> Warrants were a speculative investment;
>
> One of the risks a Warrant owner took was that a company might be merged out of existence;
>
> The Warrant is a contract which contemplates merger and does not preclude it;
>
> Regardless of the term of the Warrant, a Warrant owner had no vested right in the future prospects of a company which was party to a bona fide merger;
>
> Some companies, in merger situations, have paid Warrant owners a premium, some have not; and, in any event, there is no obligation to do so.

Every one of those I consulted underlined to me that the buyer of a Warrant to purchase Common Stock was basically a speculative bargain hunter. Instead of paying the much higher price of the Common Stock (when INDIAN HEAD Common was 22, the Warrants were 4-3/4), he bought the Warrant for a fraction of the cost of the Common. He gambled that the economy and the Company's prospects would improve, the Common Stock would soar, and he would then make a "killing". Our expert will offer at the hearing examples of the price ratios of typical Warrants, and their Common Stocks. All of my consultants had considerable experience with and had themselves invested in Warrants, but none felt that the INDIAN HEAD Warrant holders had been treated unfairly. The merger was a predictable investment risk, they said, and since $30 was fair for the Common Stock, the Warrant owner had no right to complain.

For settlement purposes, the consensus was that

if we were able to obtain $32 for the Common Stock, $2 for the Warrants would be fair and a premium of 50 cents or $1 more, i.e., $3, would be a really good settlement.

In addition to the expert advice that I obtained, I brought to the negotiations more than thirty years of experience, not only in this kind of litigation, but representing clients in the buying and selling of businesses of all types, including participating in the valuation of many varied properties, assets and interests. Accordingly, I concluded that under all of the circumstances of this case, $2 to $3 for the Warrants was fair. However, despite my doubts as to both liability and the chances of obtaining a judgment for much more than the difference between the warrant exercise price and the price of the Common Stock, I felt that in the context of settlement, where the warrant market price, prior to delisting of the Common Stock, had been $4.75, that $4.75 should be our target, less a discount for settling now.

(c) Debentures: Since the 5-1/2% Convertible Debenture has a face amount of $1,000 and a redemption price of $1,033, and the INDENTURE permits INDIAN HEAD to merge, we did not think there was an issue as to value. If there was a default, the Company's obligation was limited to one of those amounts. For settlement purposes, the only issue we saw was how much of a discount should be allowed for being paid now, keeping in mind that 5-1/2% is a low interest rate in these inflationary times.

3. THE NEGOTIATIONS: After a number of false starts, the negotiations proceeded in earnest, with some

seven lengthy meetings in all. By April 28th, an agreement was reached on the basic money terms, but the details as to classes and the payments to sellers remained open. We met again on May 3rd, at which time an agreement in principle was reached, which was reduced to letter form on May 7th.

The negotiations were unusually difficult. For one thing, we were dealing with three different securities, two of which have distinctive characteristics, Warrants and Convertible Debentures. For another, the defendants at first seemed to adopt a "take it or leave it" position. They started out with, and consistently maintained, that the Warrants were not entitled to anything. The most that they would agree was that the Warrants were inextricably tied in to the Common Stock. Since the Warrant exercise price was $30, defendants contended that if the Common Stock received $31, then the Warrants were entitled to $1, period! When ultimately $32 was agreed upon for the Common Stock, the defendants insisted that the Warrants receive $2.

I finally concluded that we must demand $4 as a bottom figure and, if that were not acceptable, we would break off negotiations, and Shamrock's counsel agreed. After considerable discussion, we were finally able to obtain the $4 figure.

Defendants were almost as obstinate on the Debentures as they were on the Warrants. They denied any default -- they still do. And, of course, they dismissed out of hand our claim for redemption. They even insisted

that they could not understand our argument that redemption was a condition to merger. But ultimately we were able to achieve a premium for the Debentures, over the conversion value, to compensate for the abrupt termination of a right which still has 17 years to go. The defendants had a real problem with the concept of such a premium, repeatedly pointing out that the INDENTURE contemplated a merger and, of course, denying any default. So the final $844.16 agreement represents a "settlement" in its ultimate meaning: genuine, hard bargaining and give and take.

Finally, the following week, I asked the Company to supplement our agreement in principle so that the payments would be net to the class members, without the usual deductions for plaintiffs' attorneys' fees and expenses awarded by the Court. The defendants eventually agreed. Negotiations as to the amount concluded with a maximum of $600,000 and the agreement of all plaintiffs' counsel not to seek any fees or disbursements from the class members.

4. THE SETTLEMENT AGREEMENT: Once the financial terms had been agreed upon, it took two and a half months to negotiate the written terms. The following table shows the principal changes we were able to make from the defendants' drafts:

	Defendants' Drafts	Final Agreement
EFFECTIVENESS OF SETTLEMENT	TBI had the right to merge before it had a binding obligation to make the settlement payments.	In order to merge, TBI must make the settlement payments.

	Defendants' Drafts	Final Agreement
PROOFS OF CLAIM	Complicated Proofs were required for all Class Members.	Proofs of Claim were eliminated for all Common Stock, Debenture and Warrant owners, and required only for Sellers. The Proof of Claim form was substantially simplified.
RESOLUTION OF DISPUTES	A Special Master pursuant to FRCP Rule 53 would review all Proofs of Claim.	If counsel cannot resolve objections, they are submitted to the Court for resolution.
LIEN FOR EXPENSES	If the Agreement does not become effective, TBI's expenses for Notice, Administration, Escrow Fees and the fees and expenses of Special Master will be a first charge and lien against any subsequent settlement and shall be taxed against the Class as costs in the event of a final judgment dismissing the actions.	Eliminated.
RIGHT TO TERMINATE	The Company could terminate if requests for Exclusion were received from Debenture, Warrant or Common Stock owners who would have been entitled to an aggregate of $500,000 under the settlement.	Termination right limited to requests for Exclusion only from Common Stockholders who would have been entitled to more than $500,000 under the settlement.
NOTICE OF SETTLEMENT	The form of Notice of Settlement was complex, detailed and difficult to read and understand.	Notice form is simplified, clarified and made easier to read.
NOTICE TO BROKERS	None	Special notice to brokers requiring them to transmit Letters of Transmittal.

STIPULATION AND AGREEMENT OF SETTLEMENT

The material terms of the SETTLEMENT AGREEMENT (except for the Cash Payments to the security holders and for the Class provisions hereafter summarized),[21] are as follows:

1. PROPOSED MERGER: The SETTLEMENT contemplates a merger of INDIAN HEAD into a subsidiary of TBE and the SETTLEMENT payments are keyed to the MERGER DATE (¶2(b)).

2. METHODS OF PAYMENT:

(a) Separate funds are established for the Debentures with MARINE MIDLAND as Escrow Agent, and for the Warrants and for payment of attorneys' fees and expenses, with CHEMICAL as Escrow Agent. Within two days after the MERGER DATE, TBI will deliver to MARINE, $12,100,000 for the Debenture Fund, $1,450,000 to CHEMICAL for the Warrant Fund and $600,000 to CHEMICAL for the Fee Fund (¶2(a)).

(b) Promptly after the entry of judgment and order approving the SETTLEMENT, the Merger will be effected and the Common Stockholders paid $32 per share by INDIAN HEAD, upon presentation of their certificates therefor (¶2(b)).

(c) After the Merger, MARINE will make the requisite settlement payments from the

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21. Paragraph (1) provided for plaintiffs' submission of the Order certifying the Classes and setting a hearing date to consider the Proposed Settlement, which was entered on August 2, 1976.

Debenture Fund to those who submit Transmittal Letters or Proofs of Claim, as required, and CHEMICAL will similarly pay out of the Warrant Fund (¶4(a) & (b)).

(d) Upon delivery to CHEMICAL of a copy of the Court's Order awarding counsel fees and expenses, CHEMICAL will make such payments out of the Fee Fund (¶4(c)).

3. FEES AND EXPENSES: TBI will pay all the expenses of administering the SETTLEMENT (¶5(b)) and will pay $600,000 to the Fee Fund for payment of counsel fees and expenses as awarded by the Court, but not exceeding said amount. Plaintiffs' attorneys agree to accept payment of such awards, not exceeding $600,000 in the aggregate, and that they will not make any claim against the class members, the SETTLEMENT FUND or against any defendant for any amounts except as awarded by the Court (¶5(a)).

4. APPROVAL OF SETTLEMENT:

(a) If the SETTLEMENT is approved, a judgment and order shall be entered certifying the three captioned actions as class actions and the members of the classes as defined in the court Order of August 2, 1976, excepting for those who have requested exclusion; and approving the SETTLEMENT as fair and dismissing the actions with prejudice together with all claims asserted or which might have been asserted (¶6(a) & (b)).

(b) The Order shall also provide for mailing of Letters of Transmittal to the Debenture and Warrant Classes and designating MARINE and CHEMICAL to review all Proofs of Claim and Letters of Transmittal (¶6(c) & (e)). Within such time as the Court may allow, MARINE and CHEMICAL shall advise counsel for plaintiffs and defendants of any objections they may have to any Proofs of Claim or Letters of Transmittal and if any objection cannot be resolved, the objecting party shall submit it to the Court for resolution (¶6(f)).

(c) Where there are no objections, all Proofs of Claim shall be paid no later than 40 days after the date set by the Court for notice by MARINE and CHEMICAL as to the acceptability of Proofs of Claim and Letters of Transmittal (¶6(f)(iv).

(d) The Order approving the SETTLEMENT will enjoin all plaintiffs and class members from making any claims related to consummation of the merger other than an appraisal proceeding under the Delaware Corporations Law (¶6(g)).

5. OPTION TO TERMINATE:

(1) TBI may at its option terminate the Agreement:

(a) if Common Stock class members requesting exclusion would be entitled to an

aggregate of more than $500,000 under the SETTLEMENT had they not requested exclusion (¶7(b)(ii)).

(b) if the SETTLEMENT is not approved within 30 days following the conclusion of the Settlement Hearing (¶7(b)(iii)), or,

(c) if the Merger is stayed or enjoined or cannot be effected for any reason (¶7(b)(iv)).

(2) The right to terminate shall be effected by written notice to my firm within ten days after the occurrence of the event giving rise to the right of termination (¶7(c)).

(3) If the SETTLEMENT is not approved, or if approved, the judgment is modified or appealed so as to change the terms of the SETTLEMENT AGREEMENT, or if the judgment is finally reversed, then the SETTLEMENT AGREEMENT and all papers relating thereto shall be null and void, except that the provision for returning the cash held in escrow, TBI's obligation to pay its expenses and the provision regarding the inadmissability of the terms of the AGREEMENT, shall survive (¶7(d)).

THE CLASSES

The classes for whom we negotiated the settlement, (as certified by the Court's Order of August 2, 1976) and the amounts each will receive if the settlement is approved (net of attorneys' fees and expenses which will be paid by TBI), are as follows:

COMMON STOCK CLASS - $32 per share.

All Owners of INDIAN HEAD Common Stock on August 2, 1976 who have continuously owned such shares to and including the date of the proposed merger of INDIAN HEAD into Thyssen-Bornemisza Holdings, Inc. which will take place if the proposed settlement is approved (the "MERGER DATE").

DEBENTURE OWNER CLASS - $844.16

All Owners of INDIAN HEAD 5 1/2% Convertible Subordinated Debentures due April 15,1993 ("Debentures") on August 2, 1976 who have continuously owned them to and including the MERGER DATE.

DEBENTURE SELLER CLASS A - The difference between $650 and the sales price (before deducting expenses of sale) but no more than $50 per Debenture

All Owners of Debentures on September 27, 1973 who sold such Debentures between September 27, 1973 and July 1, 1974.

DEBENTURE SELLER CLASS B - The difference between $701 and the sales price (before deducting expenses of sale) but no more than $100 per Debenture

All Owners of Debentures on July 2,1974 who sold such Debentures between July 12, 1974 and August 2, 1976.

WARRANT OWNER CLASS A - $2.50 Per Warrant

All Owners of INDIAN HEAD Warrants issued pursuant to the Warrant Agreement dated as of May 15, 1965 between INDIAN HEAD and CHEMICAL BANK ("Warrants") on August 2, 1976 who have continuously owned them to and including the MERGER DATE.

WARRANT OWNER CLASS B - $4 per Warrant

All Owners of Warrants on July 2, 1974, who have continuously owned them to and including the MERGER DATE.

WARRANT SELLER CLASS A - $1.50 per Warrant

All Owners of Warrants on July 2, 1974, who sold such Warrants between July 12, 1974 and August 2, 1976.

WARRANT SELLER CLASS B - No Payment

All Owners of Warrants who sold such Warrants between August 1, 1973 and July 1, 1974.

FAIRNESS OF THE SETTLEMENT

INTRODUCTORY

This settlement, more than any in my experience, has been difficult. Negotiating values of three very different securities, all at one time, is hard enough. Over the years, investors have paid as much as $30 for the Warrants, over $1,200 for the Debentures and as high as $46.50 for the Common Stock. Some may still own securities bought at those prices. Others felt that the securities laws were designed to guaranty them a profit, and others claimed a constitutional right to retain their Warrants and their Debenture conversion rights.

There is no way that we could arrive at a Settlement which would satisfy such views, because settlement by definition demands compromise in the face of legal and

economic reality. Accordingly, we negotiated this settlement in that light. The fairness of our efforts are attested to by the number of letters already received approving the settlement.

Since the settlement involves a merger, we required the same kind of independent expert investigation and opinion as we would insist upon in any merger situation. Our experts report, reflecting that investigation and opinion, will be furnished to the Court prior to the hearing.

Finally, the legal and economic backdrop to any settlement is critical to the evaluation of fairness. Here, we have the INDIAN HEAD minority security holders locked in with a 90.6% majority stockholder. The withdrawal of the Aborted Merger put the minority in limbo; what little public market there might be was conditioned and depressed by the uncertainty of what might happen next. Thus, the minority's investment was at risk every day, particularly compared to the investment opportunities available in the rising market which has characterized the economy since the Aborted Merger.

Legally, the withdrawal of the Aborted Merger largely mooted the Common Stock and Warrant claims of our Amended Complaint. The Convertible Debenture default and redemption claims were sui generis, increasing the likelihood of appeals all the way to the U.S. Supreme Court. And the entire case would have had to be prosecuted under the increasing cloudiness of a restrictive securities and class action atmosphere created by recent U.S. Supreme Court

decisions.

In the context of the facts, the economics, and the law, this is why we think the settlement is fair for everyone.

CONVERTIBLE DEBENTURES:

1. The Debentures expire in 1993; their face value is $1,000; the interest rate is fixed at 5-1/2%; and INDIAN HEAD can voluntarily redeem them this year for $1,033.

2. Our expert will attest:

> The 5-1/2% interest rate, at a price of $844.16, is low in today's market;
>
> $844.16 for a $1,000 5-1/2% convertible bond compares favorably by any relevant standards to the current market price of other comparably rated convertible debenture issues;
>
> $844.16 cash to the Convertible Debenture owners today can be invested in comparably situated and rated convertible debentures bearing an annual interest rate of between 8-1/2% and 10%.

3. Another test of fairness is to compare $844.16 with the prospect of our obtaining a judgment based upon our alternative claims for redemption at $1,033, or for payment upon default of the $1,000 principal, plus interest. Both claims require de novo legal holdings because there are no cases directly in point. Therefore, the $844.16 payment now must be measured against both the measure of damages in the

event of a judgment, as well as the risk that there might be no judgment at all. On that basis we submit that legal as well as market reality converge to make $844.16 an unusually fair compensation to the Debenture owners for the claims they have.

4. $844.16 for each CONVERTIBLE DEBENTURE contrasts with the $701 the owners would have received had they been sent notice of the TENDER OFFERS and then converted.

5. Since TBE is bearing attorneys' fees and expenses as awarded by the Court (not more than $600,000), each Debenture owner will actually receive $844.16, rather than a lesser amount after deduction for attorneys' fees and expenses, and each Debenture Seller will similarly receive his full share without deduction.

6. Each Debenture Seller Class A member who sold between the First and Second Tender Offers, when the market was mostly over $650, will receive up to $50, if he sold for less than $650. Since he has had the use of his money for more than two years, we think he is being treated fairly. Each Debenture Seller Class B member who sold after the Second Tender Offer will be paid up to $100, if his selling price was below $701. He too has had the use of his money, but the average market after the 1974 Tender Offer was much lower than after the 1973 Tender Offer.

COMMON STOCK: 1. In evaluating the fairness of the settlement for Common Stockholders, we note that in 1973 and 1974 the owners of 90.6% of INDIAN HEAD's Common Stock sold their shares to TBI for $27 a share. No stockholder challenged either tender. Since the commencement of this litigation, until the Aborted Merger Proposal, no Common Stockholder communicated with us, despite the fact that the BRUCKER-KAPLAN action was well publicized in the Wall Street Journal.

2. The $32 per share payable to the Common Stock, $5 more per share than the Tender Offers, involves an evaluation of INDIAN HEAD as a going concern today. We defer to the experts, who, I have already pointed out, felt that the $30 offered under the Aborted Merger eighteen months after the expiration of the last $27 tender, was not unfair. Our expert, Martin J. Whitman, attests that $32 per share is fair. For example, he points out that on the basis of earnings, book value and asset value $32 a share compares very favorably with comparable securities.

3. $32 for the Common Stock compares to the $27 Tender Offers.

4. Each Common Stockholder will actually take home $32 because there will be no deduction for fees and expenses.

WARRANTS: 1. In our evaluation, we considered that only 8% of the outstanding Warrants were tendered in 1974 at $2.25 per Warrant; that the Warrant holders were notified in the 1974 Tender Offer that the Common Stock might be delisted and that no Warrant owner sought to restrain the tender. As with the Common Stock, we likewise defer to our expert as to the fairness of the $4 settlement payment for the Warrants. We consulted with experts prior to and during the course of the negotiations. In addition, after the settlement in principle was agreed upon on May 3, and questions were raised as to the fairness of the $4 Warrant settlement price, both Messrs. Whitman and Brilliant reviewed once more the elements entering into a determination of fairness of the Warrant settlement. I talked to other independent investment bankers and brokers and all were unanimous that $4 was a fair price for the Warrants.

2. $4 for the Warrants compares to $2.25 in the Second Tender Offer.

3. The $4 settlement, net to the Warrant owner who has been an owner from July 2, 1974 through August 2, 1976 inclusive, is close to the $4.75 market price on July 1,1974, when the exercise price was $25 compared to $30 today.

4. Each Warrant Seller Class A member, who sold after the Second Tender Offer began when the market was in the $2 range, had the use of his money for upwards of a year and a half. The $1.50 settlement payment, net to him, to-

gether with the value from the use of his money, comes close to making him whole, and close to the $4.75 market prior to the Second Tender.

MARKET VALUE

Market value is one of the most important tests of fair value, particularly of a New York Stock Exchange listed company like INDIAN HEAD. A look at the market immediately before the tenders and Aborted Merger, and now, shows how well this settlement passes that test.

1. THE SETTLEMENT, FIRST TENDER AND THE MARKET

	Settlement	9/26/73 Market Price [22.]	9/27/73 Tender
Common Stock	$32	$24-3/4	$27
Debentures	$844.16	$790 [23.]	$701- if converted

2. THE SETTLEMENT, SECOND TENDER AND THE MARKET

	Settlement	7/1/74 Market Price [22.]	7/12/74 Tender
Common Stock	$32	$23-1/4	$27
Debentures	$844.16	$650 [23.]	$701- if converted
Warrants	$4	$4-3/4	$2.25

3. THE SETTLEMENT, ABORTED MERGER AND THE MARKET

	Settlement	2/11/76 Market Price [24.]	Aborted Merger
Common Stock	$32	$24	$30
Debentures	$844.16	$600 [23.]	$779.22
Warrants	$4	$2	$-0-

22. Over-the-counter for the Common Stock and Debentures; American Stock Exchange for the Warrants.
23. Debenture market prices are quoted in tenths.
24. Just before the announcement of the Settlement.

NON-PAYMENT TO FIRST TENDER WARRANT OWNER SELLERS:

The settlement makes no provision for payment to the members of WARRANT CLASS B -- those who owned Warrants from August 1, 1973 to July 1, 1974.[25.] This class was certified because it was embraced in the Shamrock Complaint, which contended that the First Tender Offer was misleading because it falsely stated that TBE was not seeking to control INDIAN HEAD.

Even if that claim could be proven, which I strongly doubt, the standing to bring such a suit and the liability to the Warrant owners to whom no tender was made or sent, presents even greater hurdles. For example, on August 1, 1973 when the exercise price of the Warrants was $25, the Common Stock closed at 18-3/4 and the Warrants closed at 6-1/2. During the September 12, 1973 - October 11, 1973 First Tender period, the Warrants traded $6 to $7. By November, they fell to $4 to $5, where they remained until trading was suspended on July 2, 1974. After the First $27 Tender Offer was concluded on October 11, 1973, the Common Stock market price slowly declined and, during the first six months of 1974, traded mostly in the $18 to $20 range.

On the basis of the law and the market reality, I do not think that the members of Warrant Seller Class B -- who have had the use of their money for three years -- are entitled to any settlement payment. Although they are bound by the settlement, they can, of course, opt out.

25. A period which commences six weeks before the First Tender Offer and ends with the day before trading was suspended preparatory to the Second Tender Offer.

CONCLUSION

It seems to me that there is a presumption of fairness to payments of:

$844.16 for Debentures;

$4 for Warrants;

$32 for Common Stock,

negotiated by experienced plaintiffs' counsel with outstanding defense lawyers in the face of

an original $701 claim for the Debentures;

the speculative nature of Warrants which, prior to the Second Tender Offer traded at only a fraction above the settlement price; and,

expert opinion that $27 was a fair tender price for the Common Stock.

That presumption becomes virtually irrebuttable just on the face of the facts and the independent valuation opinions. When you add the serious legal liability questions, plus the fact that the amount payable to each class compares favorably with the various damage variables for each security, this settlement makes so much sense, it is at least as much, and possibly more, than a Court might award after trial.

We are proud to present this settlement to the Court and to the INDIAN HEAD security holders. Although this may not be the largest settlement in this District, I believe that in its fairness to the members of each Class, it is second to none.

Sworn to before me this
30th day of September, 1976

/s/ William Klein II
WILLIAM KLEIN II

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

EXHIBIT A - DETAILED RESUME (pp. 713a-716a)

WILLIAM KLEIN II

Mr. Klein was graduated from New York University in 1941 and Yale Law School in 1943. He was an associate with Hays, St. John, Abramson & Heilbron from 1943 to 1947, and a partner from 1948 through 1958.

From about 1943 to about 1950, Mr. Klein specialized in corporate, commercial, copyright and trademark litigation. Among the cases involving copyright and trademark law in which he was in charge as an associate were: Magazine Publishers, Inc. v. Ziff Davis Publishing, 147 F.2d 182 (2d Cir., 1945); Jerry Vogel Music v. Miller Music Co., 272 A.D. 571, 74 N.Y.S.2d 425 (1st Dept., 1947); and BMI v. ASCAP, Sup. Ct., N.Y. County, 1944.

Mr. Klein has participated in many diverse corporate and securities matters, representing public and private companies, underwriters and investors. He has been a director and officer of both public and private companies, including Director and Secretary of Mutual Shares Corporation, a no-load open end registered investment company. His professional services have included registration statements, underwritings, stock exchange listings, franchising and licensing, and many mergers, sales and acquisitions in such industries as oil and gas, uranium, coal and other minerals, shipping, publishing, music, theatrical productions, motion picture, radio and television, cement and building blocks, perfume, etc. He practices frequently before the Securities and Exchange Commission, and was the partner in charge for a

party to one of the largest proxy contests of the 1950's, involving Colt Industries, Inc. (then Penn Texas Corporation). He has been associate general counsel for a number of trade associations, including the American Society of Travel Agents, Association of Precious Stone Dealers, Composers Authors Guild (then called Songwriters Protective Association) and the Authors League of America, for whose Dramatist Guild he negotiated The Minimum Basic Agreement with theatrical producers and a Collective Bargaining Agreement for free lance television writers with the three major television networks.

From 1959 to 1963, Mr. Klein was General Counsel for ABC International Television Co., Inc. and ABC Merchandising Co., subsidiaries of American Broadcasting Company. He was responsible for the acquisition of interests in some twenty foreign television companies all over the world, as well as licensing agreements, acquisition, artists and other contracts.

In 1964, he resumed private practice and, since 1969, has been a senior partner of Austrian, Lance & Stewart, P.C.

During the past ten years, he has participated in the prosecution and defense of class, derivative, appraisal and varied stockholders actions under federal and state laws, including such securities and class actions as Mutual Shares Corporation v. Genesco, 384 F.2d 540 (1967); Mutual Shares Corporation v. Beck Industries, Inc. (Sup. Ct., N.Y. County,

1969); Matter of Talley Industries, Inc., Securities & Exchange Commission Admin. Proceeding File No. 3-1980, Investment Company Act Release No. 5953 (1970); Berkowitz v. Baron, 70 Civ. 5139 (S.D.N.Y., J. Canella, sub judice); Basch v. Talley Industries, Inc., 53 F.R.D. 9 (S.D.N.Y., 1971); Basch v. Talley Industries, Inc., C.C.H. Fed. Sec. L.Rep., par. 93, 364 (S.D.N.Y., 1971); Jezarian v. Csapo, 72 Civ. 1671 (S.D.N.Y., 1972); Blank v. Talley Industries, Inc., 54 F.R.D. 627 (S.D.N.Y., 1972); Galdi v. Berg, 359 F. Supp. 698 (D.C. Del., 1973); Braun v. Widmann, 73 Civ. 670 (N.D. Pa., 1973); Cambridge v. Norte (S.D.N.Y., 1974, J. Metzner); Rothschild v. Great Western United Corporation, (Ct. of Chancery, Delaware, 1974); Mutual Shares Corporation v. Delhi International, CA 3-74-1195D (N.D. Texas, 1974); Blank v. Talley Industries, Inc., 64 F.R.D. 125 (S.D.N.Y., 1974); Blank v. Talley Industries, Inc., 390 F. Supp. 1 (S.D.N.Y., 1975); In the Matter of Stirling Homex Corporation, (Securities & Exchange Commission, 1975); Rothschild v. Helme, 75 Civ. 2866 (S.D.N.Y., 1975); Galdi v. Wainger, 76 Civ. 3554 (S.D.N.Y., J. Frankel, 1976); and appraisal actions including In Re Galdi (Johnny-On-The-Spot) (Sup. Ct., West. County, 1972) 168 (21) N.Y.L.J., August 1, 1972, col. 3F; and Matter of Sonesta International Hotels Corporation v. Norte & Co. (Sup. Ct., N.Y. County, 1975), 173 (114) N.Y.L.J., June 13, 1975, col. 3F, p. 15, J. Markowitz. Actions in many other fields include Sigety v. Ingraham, 29 N.Y.2d 110, 327 N.Y.S.2d 10, 272 N.E.2d 514 (N.Y. Ct. of App., 1971); Scharf v. Barbaro, 321 N.Y.S.2d 840 (N.Y. App. Div., 2d Dept., 1971), Estate of Lee Shubert (Surrog. Ct., N.Y.

County, 1972), Lawrence v. Shubert (Sup. Ct., N.Y. County, 1973), Harvey v. Aetna (E.D.N.Y., 1973), and Austrian v. Equitable Life Assurance Society of United States, 39 N.Y.2d 477, 384 N.Y.S.2d 418 (1976).

In the last ten years, Mr. Klein has been an active arbitrator for the American Arbitration Association; and in 1976 was a panelist for the Practicing Law Institute Federal Civil Practice seminars.

EXHIBIT B - LETTER DATED JULY 26, 1976
(pp. 717a-720a)

GEORGE LADD

CRAGMOOR FARM
R. D. #1
YORK HAVEN, PA. 17370

July 26, 1976

William Klein, II, Esq.,
Austrian, Lance and Stewart, P. C.,
630 Fifth Avenue,
Rockefeller Center,
New York, N. Y. 10020.

Dear Mr. Klein: In Re: INDIAN HEAD, Inc.,
Proposed Settlement.

Acknowledging your letter of July 20, 1976 wherein you advise INDIAN HEAD SECURITY HOLDERS of the proposed settlement with Thyssen-Bornemisza, Inc., I hasten to extend to you my warmest congratulations for your knowledge, skill and tenacity in negotiating a most involved and difficult arrangement. The obsticles you have encountered must, indeed, have been formidable, and your fine accomplishment must be highly gratifying. You can take great pride in a job well done.

However, there is one aspect of the proposed settlement that appears to me to be decidedly unfair, and that is the proposed arrangement whereby buyers of the Warrants who purchased after July 12, 1974 would receive less than those who purchased prior to that date.

I do not see that Warrant owners who sold after the date stated would have the slightest residual interest in Warrant ownership, or have any right whatsoever to share in the proceeds of the proposed settlement with TBI.

I do perceive they might well have a grievance against TBI for the attempted shabby treatment they received , but this would seem to be a matter between the selling Warrant holder and TBI, without involvment of the subsequent buyer of the Warrants.

Doubtless it is the same logic of possible grievances by sellers of Debentures after July 12, 1974 which has prompted TBI to offer a settlement to them out of their own funds, and over and above the sum paid to all Debenture holders, regardless of the purchase date.

If sellers of Warrants after the date in question are entitled to a payment, likewise it should come from TBI out of TBI funds, and not be deducted from the proceeds of the subsequent buyer and present full owner of the Warrants.

There cannot be a lot of money involved, for there are only less than 350,000 of Warrants presently outstanding and likely relatively few of these would have been sold subsequent to July 12, 1976.

From the very time TBI came into the picture, they have taken a cavalier attitude toward the Warrant holders. This mystifies me, for the rights and priveleges of this type of security are just as sacred and precious as are those of any other class of security.

Another aspect of the proposed settlement concerning the Warrants, which could result in a lot of litigation, would be the difficulties to be experienced in sorting out the proper purchase dates, because customarilly the 'floating supply' of Warrants are seldom transferred , but rather held in "street form" through perhaps numerous sales and purchases. Perhaps substantial numbers of those who appear as registered owners on July 12, 1974 had long previously sold their Warrants. Establishment of ownership as of a particular date in many cases will prove very difficult.

It will not be practical for me to personally appear before the Court at the fairness hearing, but if you will be good enough to advise me precisely how to address the Judge, I would like to write to him, supplying a copy of this letter outlining my views as aforesaid. A pre-addressed, stamped envelope is enclosed for your notation.

Again, my congratulations to you for your fine accomplishment, and my sincere thanks for your kindnesses.

Sincerely yours,

George Ladd

George R. Titman
6170 US 33 North
Coloma, Michigan 49038
August 20, 1976

William H. Klein, II
Austrian, Lance, & Stewart, P. C.
6[illegible] Fifth Avenue,
New York, New York 10020

Re: Indian Head, Inc. Class Actions,

Dear Mr. Klein:

As a holder of 50 Class B Owner Warrants, I wish to advise you that I have completed the "Proof of Claim", or will do so when it is sent.

How ever, I object to the high handed take over of this company and the lack of consideration for investors, especially in the warrants.

I purchased my 50 warrants on June 1, 1970 at $7.50 each. Thereafter they moved up to the $16 area. I do not think the $4 offer fully recognizes the future possibilities of this company, and I feel I should be offered the opportunity which I purchsed to participate in the full potential of this investment between now and 1990. Obviously, the European company taking over from its point of view is looking for much greater appreciation.

I feel the coutr should develop a formula which would allow warrant holders to participate fully in whatever growth may result should they so elect.

Will you alos please inform the court that Mr. Powers indicated at the time of the "take-over" that he did not plan to exercise his warrants. The sum offered that the time was miserly, and still is.

Yours very truly,

George R. Titman

George R. Titman

Lauretta F. Titman

Lauretta F. Titman

720a

JOSEPH P. GUARINO
396 DEGRAW STREET
BROOKLYN 31, N. Y.

August 22, 1976

Austrian Lane & Stewart, P.C.
630 - 5th Ave.
New York, N.Y.
Re: I ndianhead Warrants

Gentlemen:

I'm sorry but I will not tender my I ndianhead Warrants to T.B.I. because they are not paying the Exercise Price, the price which I must pay when I purchase the stock.

I would appreciate your telling them that I will seek an attorney for double damages should I find I'm forced to give the warrants up.

yours truly,
Joseph P. Guarino

EXHIBIT B-1 - LETTER DATED JULY 25, 1976

17/76

lian Head Requests spension of Trading Common, Warrants

/a WALL STREET JOURNAL *Staff Reporter*

EW YORK—Indian Head Inc. said it re-ted a suspension of trading in both its mon shares on the over-the-counter ket and its warrants on the American k Exchange because "we noticed in-sed volume in the trading of our securi-" a spokesman said Friday.

ndian Head said that it sought the sus-ion. "in order to protect our shareholders' rests" and that the requested suspension in the context of announcements made in ruary and March." He declined to com-it further.

In Feb. 12 Thyssen-Bornemisza Inc., er of more than 90% of Indian Head's mon outstanding, announced plans to rge Indian Head into a subsidiary cre-d for the merger. But on March 8 Thys-h-Bornemisza, the U.S. subsidiary of hyssen-Bornemisza N.V., a privately wned Dutch industrial company, an-ounced that it was withdrawing its merger plan because of court decisions that it said might have changed the merger climate.

Thyssen-Bornemisza also expressed con-cern at the time about a lawsuit filed against it by trustees for Indian Head con-vertible-debenture owners. The trustees claimed the merger would result in irrepar-able harm to owners of Indian Head con-vertible debentures, warrants and common shares by permitting Thyssen-Bornemisza to acquire Indian Head at discount prices.

INDIAN HEAD INC (A) Quar May 29:	1976	1975
aSales	$[illegible],000	$98,832,000
Inco cnt op	6,063,000	3,851,000
Inco dis op		29,000
Net income	6,063,000	3,880,000
Shr earns (primary):		
Inco cnt op	.98	.62
Net income	.98	.62
Shr earns (fully diluted):		
Inco cnt op	.94	.60
Net income	.94	.60
6 months:		
aSales	232,507,000	184,138,000
Inco cnt op	9,287,000	5,923,000
Inco dis op		736,000
Net income	9,287,000	6,659,000
Shr earns (primary):		
Inco cnt op	1.50	.95
Net income	1.50	1.07
Shr earns (fully diluted):		
Inco cnt op	1.44	.93
Net income	1.44	1.04

a From continuing operations.

Mrs. Arthur J. Tuccio
146 West Mountain Road
Ridgefield, Connecticut 06877

Ridgefield, Conn.
July 25, 1976

Judge of The Federal Courts
Southern District of New York
New York, N.Y.

Dear Sir,

I am a shareholder of Indian Head Co. since Jan. 10, 1968 owning 1050 shares, at a total cost of $45,905.40, giving an average of a share at $43.72.

After holding the stock for 8 years and seeing what is happening to the company, I am writing to you in desperation to ask you to do everything in your power to get the money back to the shareholders or to stop this takeover.

I have four young children and I cannot afford to loose this kind of money after having had F A I T H in the company for almost a decade.

Enclosed please find the earning report [illegible]e latest decision on Indian Head Co.

Sincerely,
Arthur Tuccio

BEST COPY AVAILABLE

EXHIBIT B-2 - LETTER DATED AUGUST 23, 1976

M.M.B.-N.Y.
1976 AUG 25 PM 3:11
CORPORATE TRUST OPERATIONS

3606 Bonny Brook Road
Harrisburg, Pa. 17109

August 23, 1976

Clerk of the United States District Court
Southern District of New York
P. O. Box 1046
New York, N.Y. 10005

Dear Sir:

I am in receipt of three communications from you regarding Indian Head Mills, CV 5½% of 1993. I have in my possession one green form : Proof of Claim - Debenture Seller Class A; one yellow form: Proof of Claim - Debenture Class B. However, I am unable to locate the contents of the third envelope which probably applied to the securities which are still in my possession.

If there is a form which I must fill out to show that I am still the owner of this security, will you please send me a copy of it.

I might say that I am not interested in selling my $1,000 bond for $844.16.

Very truly yours,

Ethel H. Oaks

(Mrs.) ETHEL H. OAKS

HANLEY ACCOUNTING PERSONNEL INC. (Agency) · 230 Park Avenue, New York, N. Y. 10017

(212) 689-3533

RICHARD T. HANLEY, C.P.A., PRESIDENT
J. PATRICK HANLEY, VICE PRESIDENT
JOHN F. HANLEY, ASSOCIATE CONSULTANT
WILLIAM J. HANLEY, ASSOCIATE CONSULTANT

July 12, 1976

Mr. William Klein II
Austrian, Lane & Stewart, P.C.
630 Fifth Avenue
New York, N.Y. 10020

Dear Mr. Klein:

Enclosed for your information is a copy of my letter of July 7 addressed to Mr. Hans Thyssen. Also enclosed is a copy of Indian Head's second quarter report.

If your independent efforts do not achieve a fair and equitable price, we will turn our situation over to our attorney who may either petition the Court for right to intervene - as a friend of the Court or act independently on our behalf. He is noted for his accomplishments in this field.

The price you indicated was in the works is unreasonable based on 1976 results to date and the strong upward thrust for the balance of the fiscal year.

I dislike to take action that may negate present negotiations but your client's ideas of a fair price appear to be far out of line with ours. If you are talking between $35 and 40 for the stock - $95 for the bonds and $8 to 10 for the warrants, we are not too far apart. Otherwise we will make our move shortly.

Sincerely,

William J. Hanley

WJH:mjl
encs.

July 7, 1976

PRIVATE & PERSONAL

Mr. Hans Thyssen
Thyssen-Bornemisza NV Europe
c/o Indian Head Inc.
1211 Avenue of the Americas
New York, N.Y. 10036

Dear Mr. Thyssen:

The writer and his associates are the holders of substantial bonds, warrants and stock in Indian Head. In this connection, I have been informed that a Mr. William Klein is negotiating with your company to arrive at a fair and equitable valuation of our securities.

It has been reported that your offer for the stock will be in the low 30s which will just about wipe out warrant holders. Also, understand that the price offered for Convertible Bonds is less than $90.

These prices are far below the costs (warrants $27, stock $40 and bonds $95) incurred by our little pension and profit trusts which will seriously jeopardize payments to our retired and semi-retired employees, all of whom have little or no other resources. I trust it is not your company's policy to confiscate the capital of little shareholders and pensioners.

We would prefer to receive a fair settlement but if current discussions do not develop, all dissenting security holders have no alternative except to hold our securities until maturity rather than take a pittance or bread crumb offer. There is also the probability we, and others, might institute a separate suit against a controlling shareholder in dictating a confiscatory price.

Sincerely,

William J. Hanley

WJH:mjl

EXHIBIT C - PLAINTIFFS' PROPOSED FINDING OF FACT (pp. 725a-749a)

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF NEW YORK

- -x

EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor,	Civil Action File No. 74 Civil 5755 (CESJr)
Plaintiffs,	
-against-	PLAINTIFFS' PROPOSED FINDINGS OF FACT ON MOTION FOR PRELIMINAR INJUNCTION
JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, INDIAN HEAD, INC., THYSSEN-BORNEMISZA EUROPE, N.V., THYSEEN-BORNEMISZA, INC. and THYSSEN-BORNEMISZA HOLDINGS, INC.,	
Defendants.	

- -x

PLAINTIFFS' PROPOSED FINDINGS OF FACT ON THEIR MOTION TO ENJOIN MERGER OF INDIAN HEAD INTO THYSSEN-BORNEMISZA HOLDINGS, INC.

1. Plaintiffs, Trustees under the Trust Agreement dated November 15, 1968 made by Wiltrud E. Gadboys, as Grantor, purchased an aggregate of $11,000 face amount CONVERTIBLE DEBENTURES between January 22, 1969 and January 6, 1969, all of said DEBENTURES so purchased being continuously owned by them from and after the date of acquisition up to the present time.

2. Defendant INDIAN HEAD, INC. ("Indian Head"), a Delaware corporation with principal business offices at 1211 Avenue of the Americas, City and State of New York, is a broadly diversified company in containers, information technology, metal and automotive products, specialty textiles, and utilities and communication products. It operates more than 50 plants employing 17,000 people in the United States, Canada and Overseas.

3. Defendant THYSSEN-BORNEMISZA EUROPE, N.V. ("TBE") (formerly THYSSEN-BORNEMISZA GROUP, N.V.) is a foreign, international industrial holding company with headquarters in Amstelveen, the Netherlands, and its activities include large-scale shipbuilding, transportation, distribution of natural gas, building materials production, storage, trans-shipment and transportation of bulk cargoes, chemicals and liquid gases, and the manufacture of agricultural machinery, tools and sorting and packaging machinery.

4. The individual defendants, JAMES M. BLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON and ROBERT M. SCHWARZENBACH, were, since prior to September 19, 1973, and now are, directors of INDIAN HEAD.

5. Defendant ROBISON, Chairman of the Board and a Director of INDIAN HEAD for more than ten years, has been Chairman of its Finance Committee since prior to September 19, 1973. He and his family and associates owned more than 270,000

shares of COMMON STOCK since prior to September 19, 1973, and on or about October 25, 1973, TBE appointed him to its Supervisory Board.

6. Defendant JAMES G. FERGUSON has been since prior to September 19, 1973, and now is Executive Vice President of INDIAN HEAD.

7. Each share of INDIAN HEAD COMMON STOCK ("COMMON STOCK") is entitled to one vote and was listed on the New York Stock Exchange continuously from prior to April 1, 1968 to August 30, 1974; and 585,386 shares are now outstanding.

8. On September 27, 1973 there were approximately 5,425,000 shares of COMMON STOCK issued and outstanding, and an additional 649,350 shares reserved for issuance to the DEBENTURE Holders, pursuant to their conversion rights (111,667 shares were also reserved for the conversion rights of preferred stockholders).

9. Each WARRANT is issued pursuant to a Warrant Agreement dated as of May 15, 1965 between INDIAN HEAD and Chemical Bank of New York Trust Company ("WARRANT"). An aggregate of 400,000 WARRANTS were issued and outstanding on July 12, 1974, entitling the holders to purchase an aggregate of 400,000 shares of COMMON STOCK. The WARRANT provides the following exercise prices: $20 per share if exercised before the close of business on May 15, 1970; $25 per share to May 15, 1975; $30 per share to May 15, 1980; $35 per share to May 15, 1985,

and $40 per share to May 15, 1990, the date the WARRANT expires.

10. As of February 12, 1976, there were 384,554 WARRANTS outstanding.

11. Each 5-1/2% CONVERTIBLE SUBORDINATED DEBENTURE due April 15, 1993 ("CONVERTIBLE DEBENTURE") is issued in denominations of $1,000; is registered in the name of the owner ther of; is part of an original issue in the aggregate principal amount of $25,000,000, of which $14,293,000 principal amount are now outstanding; and is subject to the terms and conditions of the Indenture dated as of April 15, 1968 between INDIAN HEAD and Marine Midland Grace Trust Company of New York as Trustee ("INDENTURE").

12. In April, 1968 the CONVERTIBLE DEBENTURES were offered to the public in the principal amount of $25,000,000 pursuant to a prospectus and registration statement under the Securities Act of 1933 as amended, and shortly thereafter the CONVERTIBLE DEBENTURES and COMMON STOCK reserved for issuance upon conversion thereof, were each listed on the New York Stock Exchange.

13. Each $1,000 CONVERTIBLE DEBENTURE is convertible at any time, at the option of the holder, into 25.974 shares of COMMON STOCK, which represents a conversion price of $38.50 per share.

14. INDENTURE §5:08 refers to the listing on the New York Stock Exchange of the COMMON STOCK into which the DEBENTURES are convertible, as follows:

> "The Company further covenants that, at any time when the Common Stock of the Company is listed on the New York Stock Exchange or any other national securities exchange, the Company will, if permitted by the rules of such exchange, list and keep listed on such exchange, upon official notice of issuance, all shares of Common Stock issuable upon conversion of Debentures."

15. Each CONVERTIBLE DEBENTURE is redeemable, at INDIAN HEAD's option, according to a redemption schedule which appears on the back of the CONVERTIBLE DEBENTURE. The 1976 rate is 103.3% or $1,030.30.

16. The INDENTURE requires that notices to each DEBENTURE holder be mailed to him at his last address appearing on the registration books of INDIAN HEAD.

17. The 1965 Prospectus for the WARRANTS and the 1968 Prospectus for the CONVERTIBLE DEBENTURES represented that INDIAN HEAD intended to apply for listing on the New York Stock Exchange of the COMMON STOCK for which the WARRANTS were exercisable and into which the CONVERTIBLE DEBENTURES were convertible. Such applications were made and the COMMON STOCK was listed for the New York Stock Exchange continually until delisted in September 1974.

18. Listing of the COMMON STOCK and of the DEBENTURES on the New York Stock Exchange is a material advantage for

STOCKHOLDERS, CONVERTIBLE DEBENTUREHOLDERS and WARRANT-HOLDERS.

19. The statements in the 1965 and 1968 Prospectuses as to New York Stock Exchange listing were meant to be and were accepted as a promise that the listings would be continued.

20. The provision in the INDENTURE that the COMMON STOCK will be listed and kept listed was meant to be and accepted as a contractual commitment that the listing would be continued.

21. The statements in the 1965 and 1968 Prospectuses and the provision in the INDENTURE, for listing, were made and expected by INDIAN HEAD to induce the purchase of WARRANTS and CONVERTIBLE DEBENTURES and did so induce prospective purchasers of WARRANTS and CONVERTIBLE DEBENTURES.

22. The 25 year terms of the WARRANTS and CONVERTIBLE DEBENTURES were made and expected by INDIAN HEAD to induce the purchase of WARRANTS and CONVERTIBLE DEBENTURES, regardless of the momentary vagaries of the stock market, or the economy, because the long life of the instruments afforded the opportunity of profitable participation in the growth of INDIAN HEAD over the years and did so induce prospective purchasers of WARRANTS and CONVERTIBLE DEBENTURES.

23. The right of the owner of the CONVERTIBLE DEBENTURE to hold it through April 15, 1993 and to convert

it at any time prior t pril 15, 1993 is a valuable economic right.

24. The right of the owner of the WARRANT to hold it through May 15, 1990 and to convert it at any time prior to May 15, 1990 is a valuable economic right.

25. (a) On September 19, 1973, following negotiations between representatives of INDIAN HEAD and TBE, those two companies entered into a Memorandum of Understanding, the terms of which are not in dispute. That Memorandum constituted the agreement of the parties as to the terms on which INDIAN HEAD would cooperate with TBE in TBE's making a tender offer for between 750,000 and 1,100,000 shares of INDIAN HEAD COMMON STOCK at $27 per share.

(b) On September 25, 1973, INDIAN HEAD's Board of Directors approved the Memorandum of Understanding.

26. On September 27, 1973 TBE offered to purchase 1.1 million shares of COMMON STOCK at $27 per share.

27. As required by Regulation 14D of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934 and in particular 14-d-1(c) thereof, TBE sent to each INDIAN HEAD COMMON STOCKHOLDER the statutory form of tender offer required by the Rule and Statute (1973 Tender Offer).

28. In Paragraph 9 of the 1973 Tender Offer, TBE represented that it had no present intention to seek control of INDIAN HEAD, nor did it intend to develop plans to merge it:

> "Purpose of this Offer. TBG intends through the Offer and its agreement with Indian Head referred to below to acquire between 26% and 32% of the issued and outstanding shares of the Common Stock. Indian Head has agreed that immediately upon purchase of shares pursuant to the Offer, two nominees of TBG will be elected to the Indian Head Board of Directors, one of whom will become a member of the Executive Committee and Finance Committee of the Board of Directors of Indian Head. See Item 12.
>
> * * *
>
> "Except to the extent described above, it is not the present intention of TBG to attempt to acquire control of Indian Head by means of these transactions, nor in its capacity as a major stockholder of Indian Head does TBG now have or intend to develop plans or proposals to liquidate Indian Head, to sell its assets or to merge it with any other person or to make any change in its business, management or corporate structure. TBG does intend to vote its shares in a manner which is intended to benefit all of the stockholders of Indian Head, including TBG."

29. Paragraph 13 of the 1973 Tender Offer contained the following reference to possible delisting of the COMMON STOCK.

> "New York Stock Exchange Listing Status. The Department of Stock List of the New York Stock Exchange has indiated that if the ownership by TBG of Indian Head Common Stock should rise above 32% (or 30%, if 30% or less is purchased pursuant to this Offer and the Agreement

referred to above) such additional ownership might ultimately result in the delisting of Indian Head Common Stock from the Exchange. TBG has expressed to Indian Head its commitment that it will consult with Indian Head before taking any action, other than the transactions described in this Offer, which would increase TBG's ownership of Indian Head Common Stock beyond 30% of the outstanding shares. Delisting could also result if the number of persons holding at least 100 shares of Indian Head Common Stock (approximately 4,000 at the present time) should fall below 1,200."

30. The 1973 Tender Offer was not sent to the Registered Owners of CONVERTIBLE DEBENTURES.

31. No notice was ever sent to the Registered Owners of CONVERTIBLE DEBENTURES that the Department of Stock List of the New York Stock Exchange had indicated that if TBG's ownership of COMMON STOCK should rise above 32%, such additional ownership might ultimately result in the delisting of the COMMON STOCK from the Exchange.

32. The 1973 Tender Offer expired on October 10, 1973; TBE acquired approximately 1.2 million shares of INDIAN HEAD COMMON STOCK, instead of the 1.1 million shares stated therein, plus 750,000 shares from INDIAN HEAD as required by the Memorandum of Understanding; for a total of approximately 33.9% of INDIAN HEAD's issued and outstanding COMMON STOCK, for which TBE paid, in cash, more than $50,000,000.

33. From and after October 10, 1973, TBE was the largest stockholder of INDIAN HEAD.

34. No notice was ever sent to the registered owners of CONVERTIBLE DEBENTURES that TBE had acquired nearly 2% more COMMON STOCK than the New York Stock Exchange had indicated might ultimately result in its delisting.

35. Under the 1973 Tender Offer, defendant directors sold approximately 67,000 of their shares to TBE for a total of more than $1,809,000 and defendant ROBISON was thereafter named to TBE's top policy-making Supervisory Board.

36. On or about October 24, 1973, INDIAN HEAD elected to its Board of Directors, Gerard B. Huiskamp, Chairman of TBE's Board of Management ("Huiskamp"), and Herbert E. Bachrach, a member of TBE's Board of Management and Director of its corporate planning and development ("Bachrach"), one of whom also was named to INDIAN HEAD's Executive Committee, one to its Finance Committee.

37. On October 24, 1973, TBE named ROBISON to its Supervisory Board.

38. On December 19, 1973 TBE arranged to obtain up to a maximum of $50,000,000 to be supplied by long-term borrowings pursuant to a long-term borrowing facility in the form of a seven-year multi-currency revolving credit agreement with the Chase Manhattan Bank, N.A. and fourteen other banks located outside the United States ("Loan Agreement").

39. Prior to July 12, 1974, INDIAN HEAD made its COMMON STOCKHOLDER and WARRANT HOLDER lists available to TBE.

40. On July 12, 1974, TBE made an offer "To the Holders of Common Stock and Warrants to Purchase Common Stock of INDIAN HEAD, INC.," to purchase:

> "all outstanding shares of Common Stock, $1.00 par value (the "Common Stock") of INDIAN HEAD, INC. (the "Company") from the holders thereof at $27 per share in cash net to the seller"; and
>
> "all the outstanding Warrants to purchase shares of Common Stock of the Company (the "Warrants") from the holders of such Warrants at $2 per Warrant in cash net to the seller ..."

as well as to purchase unexercised Employee Stock Options where the exercise price was less than $27 per share, for the excess of $27 over the exercise price, in cash.

41. As required by Regulation 14D of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934, and in particular Rule 14d-1 (c) thereof, TBE sent to each INDIAN HEAD COMMON STOCKHOLDER, WARRANT HOLDER and OWNER OF STOCK OPTIONS, the statutory form of Tender Offer required by the Rule and Statute (1974 Tender Offer).

42. Public announcements of the offer to purchase all the COMMON STOCK and WARRANTS appeared in advertisements in The Wall Street Journal and The New York Times on July 12, 1974 and Press Releases thereon were likewise issued, but neither

the advertisements nor the Press Releases contained the statutorily required information.

43. Paragraph 13 of the 1974 Tender Offer contained the following statement as to delisting of the COMMON STOCK:

> "Stock Exchange Listing Status. Depending upon the number of shares tendered and purchased pursuant to this Offer, the Common Stock may no longer meet the requirements of the New York Stock Exchange for continued listing and the Exchange may, therefore, delist the shares. Published guidelines of the Exchange indicate that it would consider delisting the Common Stock if the number of publicly held shares was less than 600,000 or if there were fewer than 1,200 holders of 100 or more shares (i.e. round lot holders). Moreover, in connection with the purchase by TBG of its present holdings of Common Stock as described in Paragraph 10, the Exchange stated that it would review the continued listing of the Common Stock in the event TBG acquired any additional shares of Common Stock. In such a review, the staff of the Exchange indicated that it would probably commence action to delist the Common Stock even if the guidelines set forth above are met. * * * Registration of the Common Stock under the Securities Exchange Act of 1934 may be terminated if the Common Stock is delisted and there are fewer than 300 holders of record of shares of the Common Stock. Such termination would substantially reduce the information required to be furnished by the Company to its stockholders."

44. TBE committed to pay an aggregate of $105,121,777 for all of said outstanding shares and warrants, plus a maximum additional $910,000 for employee common stock options.

45. The 1974 TENDER OFFER stated that INDIAN HEAD directors owned and proposed to tender COMMON STOCK, as follows:

	Owned (after Proposed Gifts and Transfers)	To Be Tendered	To Be Retained
James M. Flack	94,524	64,524- 84,524	30,000- 10.000
Andrew Kalman	116,184	80,000-100,000	36,184- 16,184
Paul W. McAlister	71,343	50,000- 60,000	21.343- 11,343
John E. O'Sullivan	33,624	20,000- 30,000	13,624- 3,624
Richard J. Powers	17,325	8,000- 11,000	9,325- 6,325
James E. Robison	263 152	80,000-100,000	183,152-163,152
Robert M. Schwarzenbach	73,724	30,000- 50,000	43,724- 23,724
Marshall F. Smith	4,623	0- 2,300	4,623- 2,323

46. TBE stated in Paragraph 9 of the 1974 Tender Offer that it intended to obtain control of INDIAN HEAD through the vehicle of TBI:

> "Purpose of This Offer. TBG expects to purchase a substantial majority of the Common Stock as a result of this Offer and thereby acquire control of the Company.
>
> "TBG anticipates that promptly after the Initial Expiration Date it will transfer the shares purchased or to be purchased pursuant to this Offer to Thyssen-Bornemisza Inc. (TBI), a wholly owned U.S. subsidiary which will assume the obligations for all borrowings incurred or to be incurred under the revolving credit agreement described in Paragraph 11. Such transfer will not in any manner relieve TBG of its obligations under this Offer. It is TBG's intention to acquire, directly or through TBI, stock having more thar 80% of the voting control of the Company, either through this Offer or as a result of purchases made at some future date as indicated in the next paragraph. In the event TBG so acquires 80% of the voting control of the Company, it expects to transfer to TBI all its stock in the Company which it then owns."

47. TBE also stated in Paragraph 9 of the 1974 Tender Offer that TBI would file consolidated tax returns with INDIAN HEAL.

> "TBI anticipates that it would then file consolidated income tax returns with the Company in which the tax losses of TBI arising from deductions for interest and other expenses of TBI would be applied against the Company's income, thus reducing the tax that would otherwise be payable by the Company. In such event, TBI would expect the Company to pay to it the amount which it would have had to pay in taxes if the consolidated tax returns with TBI were not filed."

48. In Paragraph 11 of the 1974 Tender Offer, TBE revealed that in December 1973 it had obtained a $50 million line of credit which it was using to finance the offer:

> "Source and Amount of Funds. * * * Up to a maximum of $50,000,000 * * * are to be supplied by long term borrowings pursuant to a long term borrowing facility in the form of a 7-year multi-currency revolving credit agreement dated December 19, 1973 with The Chase Manhattan Bank, N.A. and fourteen other banks located outside the United States. Under the agreement, borrowings are unsecured and are made at floating interest rates from 3/4 to 7/8 of 1% above the London interbank offered rate quoted in the London Eurocurrency Market."

49. The closing prices on July 1, 1974 of INDIAN HEAD COMMON STOCK, CONVERTIBLE DEBENTURES on the New York Stock Exchange, and WARRANTS on the American Stock Exchange were COMMON STOCK, 21-3/4, CONVERTIBLE DEBENTURES 65-1/2 and WARRANTS, 4-3/4.

50. TBE mailed the 1974 Tender Offer to each COMMON STOCKHOLDER of record, to each WARRANT HOLDER of record and to each eligible employee.

51. None of the WARRANT HOLDERS and STOCK OPTION HOLDERS to whom the 1974 Tender Offer was mailed had exercised their respective rights to buy COMMON STOCK under said instruments.

52. Neither the 1974 Tender Offer nor any notice thereof was sent or mailed to the registered holders of the CONVERTIBLE DEBENTURES.

53. No notice was ever sent or mailed to the registered holders of the CONVERTIBLE DEBENTURES disclosing that the COMMON STOCK may no longer meet the requirements of the Stock Exchange for continued listing and the Exchange may, therefore, delist the shares.

54. The Stock Exchange had indicated to INDIAN HEAD that if the COMMON STOCK was delisted, the Exchange might also delist the CONVERTIBLE DEBENTURES.

55. No notice was ever sent to the DEBENTUREHOLDERS that the Exchange might delist the DEBENTURES.

56. The newspaper advertisements of TBE's 1973 and 1974 Offers to buy COMMON STOCK stated that it was made solely by the statutory form required by the Act and the Rule, which was being mailed to shareholders along with the Letter of Tender.

57. The 1974 Tender Offer expired on August 19, 1974 and TBE acquired for an aggregate cash price of $99,539,000,

3,552,544 shares, bringing its total ownership to 90.6%.

58. INDIAN HEAD officers and directors sold to TBE in both Tender Offers a total of their own shares for more than $14 million.

59. INDIAN HEAD's officers and directors now own in the aggregate more than 250,000 shares of COMMON STOCK and more than 10,000 WARRANTS.

60. On August 30, 1974, the COMMON STOCK and CONVERTIBLE DEBENTURES were suspended from listing on the New York Stock Exchange and on September 20, 1974, they were delisted.

61. Since September 24, 1974, the INDIAN HEAD COMMON STOCK and DEBENTURES have been traded on the over-the-counter market in small amounts.

62. Since October 1, 1974, the market prices for the COMMON STOCK, DEBENTURES and WARRANTS have been in the range of $15-22 for the COMMON STOCK, $45-58 for the CONVERTIBLE DEBENTURES and $2-2.50 for the WARRANTS.

63. THYSSEN-BORNEMISZA, INC. ("TBI"), a Maryland corporation, is a wholly owned subsidiary of TBE and was organized in 1974 for the express purpose of acquiring TBE's INDIAN HEAD COMMON STOCK and WARRANTS, and it is the record owner thereof. Said COMMON STOCK and WARRANTS constitute TBI's only assets.

64. THYSSEN-BORNEMISZA HOLDINGS, INC. ("TBH") is or will be a Delaware corporation formed for the express purpose of having INDIAN HEAD merged into it, under the Delaware Corporation Law Short Form Merger Statute.

65. The assets and liabilities of INDIAN HEAD will be TBI's only assets and liabilities.

66. On February 11, 1976, TBI announced that it intended to cause the merger of INDIAN HEAD into TBH on March 19, 1976. Under the terms of the proposed merger, holders of outstanding COMMON STOCK will receive $30 cash per share. The plan to merge will have the following effects on the CONVERTIBLE DEBENTURES and WARRANTS.

(a) After the merger the stockholders of CONVERTIBLE DEBENTURES will no longer have the right to convert into INDIAN HEAD COMMON STOCK, but may surrender them and receive an aggregate of $779.22 cash for each $1,000 principal amount of DEBENTURES. No accrued interest is payable on them if surrendered before the March 31, 1976 record date for payment of interest. There is no requirement that the CONVERTIBLE DEBENTURES be surrendered for cash. They may be held until maturity (1993) and earn the regular interest payments.

(b) Under the Warrant Agreement, any holder of a WARRANT who might choose to exercise his warrant

after the merger at the $30 exercise price would receive in return $30 in cash for the underlying COMMON STOCK.

67. The $779.22 payable for each $1,000 CONVERTIBLE DEBENTURE is the equivalent of $30 for each share of COMMON STOCK into which the DEBENTURE is convertible.

68. If all the CONVERTIBLE DEBENTURES were redeemed, the aggregate redemption price would be $14,670,441.70.

69. If the $779.22 merger offer were accepted by all the holders of CONVERTIBLE DEBENTURES, the total payment would be $11,095,313.58.

70. Since the issuance of the WARRANTS and CONVERTIBLE DEBENTURES, the WARRANTS have traded as high as $30, and the COMMON STOCK and the CONVERTIBLE DEBENTURES on the New York Stock Exchange, as high as $46-1/2 and $1,290 respectively.

71. On February 11, 1976, the day before the merger announcement was published, the high and low prices for the WARRANTS on the American Stock Exchange were 2-2-1/8, and for the COMMON STOCK over-the-counter, 23-5/8 - 24.

72. On March 19, 1976, the proposed merger date:

(a) Each CONVERTIBLE will have approximately 17 years before it expires by its terms.

(b) Each WARRANT will have approximately 14 years before it expires by its terms.

73. Section 4.01 of the INDENTURE provides:

"The Company may at any time at its option redeem all, or from time to time any part of, the Debentures (but only in principal amounts of $1,000 or integral multiples thereof), otherwise than through operation of the sinking fund provided for in this Article Four, at the Regular Redemption Prices, together with interest accrued to the date fixed for redemption, and upon the terms applicable thereto specified in the form of Debenture hereinbefore set forth and in this Article Four."

74. Section 13.01 of the INDENTURE provides:

"The Company will not consolidate with, merge into or sell or otherwise dispose of all or substantially all the property of the Company as an entirety to, any person unless (a) the successor formed by or resulting from such consolidation or merger or the person to which such sale or other disposition shall have been made shall be a corporation organized under the laws of the United States of America or any State, district or territory thereof, and (b) such successor corporation (other than the Company) shall expressly assume, by indenture supplemental hereto satisfactory in form to the Trustee, executed and delivered to the Trustee by the corporation formed by such consolidation or into which the Company shall have been merged or by the corporation to which such sale or other disposition shall have been made, the due and punctual payment of the principal of and interest (and premium, if any) on the Debentures according to their tenor, and the due and punctual performance and observance of all the terms, covenants and conditions of this Indenture and the Debentures to be performed or observed by the Company. The Company will not so consolidate or merge, or make any such sale or other disposition, or permit any corporation to merge into the Company, unless immediately after such consolidation, merger, sale or other disposition the Company or such successor corporation, as the case may be, shall not be in default in the performance of any of the covenants, agreements or conditions contained in this Indenture or in the Debentures. Subject to the foregoing provisions of this Section, nothing contained in this Indenture or

in any of the Debentures shall prevent any consolidation or merger of the Company with or into any other corporation or corporations (whether or not affiliated with the Company), or successive consolidations or mergers to which the Company or its successor or successors shall be a party or parties, or shall prevent any sale or other disposition (or successive sales or disposition) of all or substantially all the property and assets of the Company(or its successor or successors) as an entirety, to any other corporation (whether or not affiliated with the Company) lawfully entitled to acquire and operate the same. In the event of any such sale or disposition, the predecessor company may be dissolved, wound up and liquidated at any time thereafter."

75. Section 8.01 of the INDENTURE provides:

"In case one or more of the following Events of Default shall have occurred and be continuing, that is to say:

(a) default in the due and punctual payment of any instalment of interest upon any of the Debentures as and when the same shall become due and payable, whether or not such payment shall be prevented by the provisions of Article Three, and continuance of such default for a period of 30 days; or

(b) default in the due and punctual payment of the principal of (and premium, if any, on) any of the Debentures as and when the same shall become due and payable either at maturity, upon redemption, by declaration as authorized by this Indenture, or otherwise, whether or not such payment shall be prevented by the provisions of Article Three; or

(c) default in making any Sinking Fund Payment as and when the same shall become due and payable and continuance of such default for a period of 30 days, whether or not such payment shall be prevented by the provisions of Article Three; or

(d) failure on the part of the Company to duly observe or perform any other of the covenants or agreements on the part of the Company in the Debentures or in this Indenture contained and written notice of such failure, requiring the same to be remedied, shall have been given to the Company by the Trustee, or to the Company and the Trustee by the holders of at least 25% in principal amount of the Debentures at the time outstanding and such failure shall have continued in force unremedied for a period of 60 days after the date of the Company's receipt of such notice; or

(e) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent, or approving a petition seeking reorganization of the Company under the Federal Bankruptcy Act or any other similar applicable Federal or State law, and such decree or order shall have continued undischarged or unstayed for a period of 60 days; or a decree or order of a court having jurisdction in the premises for the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Company of all or substantially all its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have remained in force undischarged or unstayed for a period of 60 days; or

(f) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under the Federal Bankruptcy Act or any other similar applicable Federal or State law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of all or substantially all its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(g) an event of default, as defined in any indenture or trust agreement securing or protecting any Senior Indebtedness, or in any instrument evidencing any such Senior Indebtedness, now or hereafter outstanding, shall happen and be then continuing and such Senior Indebtedness shall be or become due and payable prior to the date on which the same would otherwise become due and payable, and such acceleration shall not be rescinded or annulled or such Senior Indebtedness discharged within 20 days;

then and in each and every such case, so long as such Event of Default shall not have been remedied, unless the principal of all the Debentures shall have already become due and payable, either the Trustee or the holders of not less than 25% in principal amount of the Debentures then outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by the Debentureholders), may declare the principal of all the Debentures then outstanding and the interest accrued thereon, if not already due and payable, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Debentures contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of and accrued interest on the Debentures shall have been so declared due and payable, but before the Debentures shall have become due by their terms and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured instalments of interest upon all the Debentures then outstanding and the principal of (and premium, if any, on) any and all Debentures then outstanding which shall have become due otherwise than by acceleration, with interest upon such principal (and premium, if any)and (to the extent that payment of such interest is enforceable under applicable law) upon overdue instalments of interest, at the rate per annum expressed in the Debentures to the date of such payment or deposit and all amounts payable to the Trustee under Section 9.06, and any and all defaults under the Indenture, other than the nonpayment of principal on Debentures which shall have become due by acceleration,shall

have been remedied or provision shall have been made therefor to the satisfaction of the Trustee--then and in every such case the holders of a majority in aggregate principal amount of the Debentures then outstanding, by written notice to the Company and to the Trustee, may waive all defaults and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the Debentureholders shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Debentureholders shall continue as though no such proceedings had been taken."

76. INDIAN HEAD was formerly known as INDIAN HEAD MILLS, INC.

77. The first paragraph of the WARRANT TO PURCHASE STOCK reads as follows:

> "Indian Head Mills, Inc., a Massachusetts corporation (hereinafter called the "Company), for value received, hereby certifies that
> or registered assigns, is entitled, upon surrender of this Warrant at the principal office of Chemical Bank New York Trust Company, Warrant Agent (or any successor as such Warrant Agent), in the Borough of Manhattan, in The City of New York, at any time prior to the close of business on May 15, 1990, to purchase the number of shares of Common Stock of the Company shown above at the price of $20 per share if exercised before the close of business on May 15, 1970, $25 per share if exercised thereafter and before the close of business on May 15, 1975, $30 per share if exercised thereafter and before the close of business on May 15, 1980, $35 per share if exercised thereafter and before the close of business on May 15, 1985, and $40 per share if exercised thereafter and before the close of business on May 15, 1990, at which date this Warrant expires."

78. The Warrant was issued pursuant to the WARRANT AGREEMENT dated as of May 15, 1965, between Indian Head Mills, Inc., and Chemical Bank New York Trust Company ("WARRANT AGREEMENT").

79. The first paragraph of the WARRANT AGREEMENT reads as follows:

> "Indian Head Mills, Inc. (hereinafter called the "Company") proposes to issue stock purchase warrants (hereinafter called the "Warrants") entitling the holders thereof initially to purchase an aggregate of 400,000 shares of the Company's Common Stock for sale in conjunction with $20,000,000 aggregate principal amount of 5-1/2% Subordinated Debentures due May 15, 1990 (hereinafter called the "Debentures"), of the Company. Chemical Bank New York Trust Company (hereinafter called the "Warrant Agent"), at the request of the Company, has agreed to act as the agent of the Company in connection with the issuance, registration, transfer, exchange and exercise of Warrants."

80. Paragraph 5 of the WARRANT AGREEMENT reads as follows:

> "Common Stock and Warrant Common Stock. As hereinafter used in this Agreement, Common Stock shall mean stock of the Company of any class, whether now or hereafter authorized, which has the right to participate in the distribution of either earnings or assets of the Company without limit as to amount or percentage, and Warrant Common Stock (which term shall include the Common Stock issuable upon exercise of Warrants) shall mean only Common Stock, $1 par value, as authorized at the date hereof and stock of any other class into which such presently authorized Common Stock may hereafter be changed. In case by reason of the operation of Section 8(e) the Warrants shall entitle the registered holders thereof to purchase any other shares of stock or other securities or property of the Company or of any other corporation, any reference in this Agreement to the exercise of Warrants shall be deemed to refer to and include the purchase of such other shares of stock or other securities or property upon such exercise."

81. Paragraph 8(e) of the WARRANT AGREEMENT reads as follows:

"Reorganization, Reclassification, etc. In case of any capital reorganization, or of any reclassification of the capital stock, of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a subdivision or combination) or in case of the consolidation or merger of the Company with or into any other corporation (other than a consolidation or merger in which the Company is the continuing corporation and which does not result in any change in the Warrant Common Stock), or of the sale of the properties and assets of the Company as, or substantially as, an entirety to any other corporation, each Warrant shall after such capital reorganization, reclassification of capital stock, consolidation, merger or sale entitle the holder to purchase the kind and number of shares of stock or other securities or property of the Company, or of the corporation resulting from such consolidation or surviving such merger or to which such sale shall be made, as the case may be, to which such holder would have been entitled if he had held the Warrant Common Stock issuable upon the exercise of such Warrant immediately prior to such capital reorganization, reclassification of capital stock, consolidation, merger or sale."

Respectfully submitted,

AUSTRIAN, LANCE & STEWART, P.C.
Attorneys for Plaintiffs

By _____
William Klein, II
A Member of the Firm

EXHIBIT D - BRUCKER-KAPLAN DOCKET SHEET

(pp. 750a-753a)

CIVIL DOCKET JUDGE GRIESA

UNITED STATES DISTRICT COURT

Jury demand date: [illegible]

D. C. Form No. 106 Rev. CLASS ACTION

TITLE OF CASE	ATTORNEYS
[illegible]	For plaintiff: Austrian, Lance & Stewart, P.C. 250 Park Ave., NYC 10017 682-9 630 5th Ave. Rockefeller Center NYC 10020
EDWARD BRUCKER and DANIEL R. KAPLAN, as Trustees under the Trust Agreement dated November 15, 1968 made by WILTRUD E. GADBOYS, as Grantor, and CECIL G. HUSKEY, Plaintiffs, -against- INDIAN HEAD, INC., THYSSEN-BORNEMISZA EUROPE, N.V., THYSSEN-BORNEMISZA, INC., THYSSEN-BORNEMISZA HOLDINGS, INC., MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK, JAMES G. FERGUSON, JAMES M. FLACK, ANDREW KALMAN, PAUL W. McALISTER, JOHN E. O'SULLIVAN, RICHARD J. POWERS, JAMES E. ROBISON, ROBERT M. SCHWARZENBACH, MARSHALL F. SMITH, HERBERT C. BACHRACH and GERARD B. HUISKAMP,	For defendant: Cravath, Swaine & Moore One Chase Manhattan Plaza New York, New York 10005 HA 2-3000 Richard J. Cutler 1211 Ave. of the Americas New York, NY 10036 764-3140 (Indian Head Inc. Shearman & Sterling 53 Wall St. New York, NY 10005 Tel: 483-1000 (Thyssen-Bornemisz N.V. & Thyssen-Bo

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed x	Clerk	[illegible]	[illegible]	15 — / 15
J.S. 6 mailed	Marshal			
Basis of Action: S.E.C. Act of 1934 (15 USC Sec. 78(a)). Recover monies from securities fraud. $12,000,000.00	Docket fee			
	Witness fees			
Action arose at:	Depositions			

EDWARD BRUCKER etc. et ano. V. THYSSEN-BORNEMISZA GROUP N.V. et al.

BEST COPY AVAILABLE

DATE	PROCEEDINGS	Date Ord Judgment
Dec.31-74	Filed complaint and issued summons.	
01-08-75	Filed [illegible]	
	[illegible]	
	[illegible]	
01-17-75	Filed notice to take deposition upon oral examination of Marine Midland Grace Co. of New York on 2-12th 1975.	
01-8-75	Filed return cert. # 487491 on 1-8-75	
01-21-75	Filed summons and marshals mt. served	
	Thyssen-Bornemisza, Inc. by Mumbey on 1-8-75	
	Indian Head, Inc. by Cutler on 1-8-75	
	James G. Ferguson on 1-8-75	
	[illegible]	
	[illegible]	
	[illegible] by [illegible] on [illegible]	
	John E. O'Sullivan on 1-8-75	
	Richard J. Powers Mr. Cutter on 1-8-75	
	James E. Robison Mr. Cutter on 1-8-75	
	Robert M. Schwarzenbach R. Cutter 1-8-75	
01-28-75	Filed notice of appearance by deft Ferguson, Flack, Kalman, McAlister, O'Sullivan Powers, Robinson and Schwarzenbach.	CS
01-30-75	Filed notice of appearance by Richard J. Cutler for deft Indian Head Inc,	RJC
01-31-75	Filed notice of appearance by Shearman & Sterling for defts	S&S
02-03-75	Filed stip and order extending defts. time to move or answer complaint to March 3rd, 1975. Stewart, J.	
02-18-75	Filed stip. and order of witness Marine Midland Grace Trust Co. of New York time to answer is adj. to 3-6-75. --- stewart, J.	
02-28-75	Filed stip. and order ext. defts time to answer complaint to 3-31-75	
03-05-75	Filedpltfs. affdvt. and notice of motion determining that each claim in the complaint be maintained as a class action. and for summary judg. ret.3-27-75	
03-05-75	Filed memo. in support of above motion determining the action as a class action and for summary judgment.	
03-27-75	Filed Stip. and order that pltfs. motion for summary judg. and a determination that the action be maintained as a class action is ext. to 5-11-75, time which to reply is ext. to 4-11-75 and to include 4-23-75, time which to reply is ext. to include 6-6-75, oral argument on then pending motions shall be on 6-12-75. ----Stewart, J.	
03-27-75	Filed Non-pty. witness Marine Midland Grace Trust Co, of NY. Designate Mr. Wayne Bolin as person who consents to testify on its behalf	
04-16-75	Filed defts. statement pursuant to rule 9(g) and notice of cross-motion upon the complaint, for judgment dismissing the complaint ret. 6-12-75.	
04-16-75	Filed defts. Joint memorandum (1) in opposition to pltfs. motion for summary judg. and (11) in support of defts cross-motion for dismissal or summary judgment	
4-16-75	Filed defts. affdvt. and exhibits in support of cross-motion for summary judgment.	
5-12-75	Filed notice of change of address by Atty's for pltfs	
4-23-75	Filed pltfs. ANSWERING and REPLY affdvt. of W. Klein II	AI&S
4-23-75	Filed plt's ANSWERING and REPLY memorandum	AI&S
4-23-75	Filed pltfs. statement pursuant to rule 9(g)	
5-27-75	Filed pltf's ANSWERING and REPLY affdvt. of William Klein II	AI&S
5-27-75	Filed pltf's ANSWERING and REPLY memorandum	AI&S
5-27-75	Filed pltf's statement pursuant to rule 9(g)	
6-11-75	Filed affdvt. and and counterstatement pursuant to rule 9(g)	CS
6-11-75	Filed deft's joint Reply memorandum in the motions for dismissal and summary judgt	

DATE	PROCEEDINGS
06-16-75	Filed deft's Exhibits, affdvt and notice of motion for an order striking certain affidavits. ret. 6-26-75.
06-16-75	Filed deft's memorandum in support of above motion to strike certain affdvts
06-27-75	Filed pltfs memorandum in opposition to defts motion to strike certain af
06-27-75	Filed Reply memorandum in support of defts. motion to strike certain affdv
07-14-75	Filed stip. and order that deft as changed its name to Thyssen-Bornemisza Europe N.V.--Stewart, J.
07-25-75	Filed suppl. memorandum by defts' in opposition to pltfs' motion for summar judgment and in support of defts' cross-motion for dismissal or summary judgment.
08-12-75	Filed pltf's Reply to defts. supplemental memorandum
02-23-76	Filed pltf's affdvt. and order to show cause that defts show cause why an should not be issued in Rm. 506 on 3-4-76 at 3:30p.m. pltfs shall not entitled to add it as party deft. to this action pursuant to rule 21 an Marine Midland Grace Trust Co. show cause why and it is ordered that pe service upon atty's for defts by delivering no later than 5:00p.m. on 2 ---Stewart, J.
02-20-76	Filed pltf Amended verified complaint
02-25-76	Filed pltfs memorandum in support of their motion for a preliminary injuncti
02-03-76	Filed plts proposed findings of fact on their motion to enjoin Merger of Ind Head into Thyssen-Bornemisza Holdings, Inc.
02003-76	Filed plaintiffs Reply memorandum.
02-27-76	Filed pltfs request for admission for facts
02-27-76	Filed pltfs request for production
03-05-76	Filed Order apparently our inclusion of an application to join Marine Midla Grace Trust Co. of NY as a deft., in the show cause order, has caused c In order to avoid it, we are withdrawing that application and will make separate motion. So Ordered---Stewart, J. m/n
03-05-76	Filed letter of William Klein 11 dated 2-26-76 endorsed by Judge Stewart fo filing purposes in re-to confirming the statement in his affdvt. on t motion for preliminary injunction that the filing od the amended com mooted pltfs motions for class action
03-05-76	Filed stip. and order ext. defts time to answer to 3-31-76--Stewart, J.
03-11-76	Filed pltfs AMENDED COMPLAINT (Second)
03-18-76	Filed pltf. Weinberger memorandum in support of motion for consolidation and relief.
03-18-76	Filed pltf. Weinberger affdvt and notice o motion for an order consolidating the three action pursuant to rule 42(a) ret. 4-1-76.
04-05-76	Filed stip. and order that the meeting scheduled for April 5, 1976 in chamb report on the progress of settlement negotiations is postponed until Apri and that answering papers to pltf. motion seeking consolidation and othe is ext. to 4-30-76 and the ret. date for said motion is set on 5-6-76--S
04-05-76	Filed stip. and order ext. defts time to answer to 3-31-76 and to include 4 ---Stewart J.
04-19-76	Filed stip. and order ext. all defts tim to answer to 5-13-76--Stewart, J.
05-12-76	Filed stip. and order ext. time within which to serve memoranda papers to pl Weinberger's motion seeking consolidation to 5-19-76--Stewart, J. (pin 75 civ 2291)
05-12-76	Filed Stewart, J. [illegible]
06-04-76	Filed stip. and order ext. defts time to answer the first amended complaint 7-2-76--Stewart, J.
07-07-76	Filed stip. and order ext. [illegible]
07-7-76	Filed pltfs affdvt. in support of class certification; memorandum Leavin (pin 75 civ 2291)

CONTINUED ON PAGE -4-

75CIV 5755 EDWARD BUTLER IV AI -VS- INDIAN HEAD, INC. ET AL.

DATE	PROCEEDINGS
07-27-76	Filed pltfs Bercher and Weinberger memorandum in support of [illegible] to by defts, determine the action as a class action and [illegible] for [illegible] hearing of settlement (place in 77 civ 5)
07-26-76	Filed CONSENT to amended the complaint by attys for defts -Gagliardi.
07-27-76	Filed stip. and order that all references in the [illegible] and agreement of settlement dated July 20, 1976 to [illegible] Inc. Schweizerische Europa A.V. [illegible] N.V., the owner of one hundred percent of the common stock of [illegible] -Gagliardi, J.

EXHIBIT E - WEINBERGER DOCKET SHEET

(pp. 754a-756a)

| DIST. C. | | |

75 Civ. 0229 WM. WEINBERGER VS RICHARD POWERS STEWART, J.

DATE	NR.	PROCEEDINGS
01-16-75		Filed complaint andissued summons.
01-16-75		Filed affdvt. of service and summons -served Indian Head Inc. by [illegible] 1-17-75
01-24-75		Filed summons and certificate of mailing by reg. mail # [illegible] 2-10-75 [illegible] Thyssen-Bornemisza Group N.V 1 Prof, E. M. Meijerslaan Amstelveen, N-Holland Netherlands return receipt [illegible]
01-29-75		Filed notice of appearance for deft Indian Head Inc.
02-07-75		Filed notice of appearance for defts O'Sullivan, Powers, Robinson, Smith and Schwarzenbach.
02-07-75		Filed notice of appearance for defts. Thyssen-Bornemisza Group, N.V. & Thyssen-Bornemisza Inc.,
02-13-75		Filed stip. and order ext. defts. Indian Head, Inc., et al to answer to 3-10-75 --- Weinfeld, J.
02-13-75		Filed stip. and order ext. defts. Thyssen-Bornemisza Group n.v. and Thyssen-Bornemisza, Inc. time to answer to 3-10-75----Stewart, J.
02-18-75		Filed additional summons with marshal's return--served Thyssen-Bornemisza, Inc. by H. Blumbey on 2-3-75 Andrew La;man by A. Kalman on 2-3-75 James M Flack--Unable to serve
02-19-75		Filed stip. and order ext. deft Andres Kalman time to answer to 3-10-75--Stewart, J.
02-27-75		Filed plaintiff's notice to take deposition of Indian Head Inc. , James E. Robison, Marshall F. Smith, John E. O'Sullivan, Robert M. Schwarzenbach, Thyssen-Bornemisza Group N.V. & Thyssen-Bornemisza Inc. on the dates and at times hereinafter set forth.
03-12-75		Filed stip. and order ext. time for defendants Indian Head, Inc., Powers, Robison, O'Sullivan, Smith, Schwartzenbach and Kalman to answer to 3-31-75 - Stewart, J.
03-12-75		Filed stip. and order ext. defts Indiam Head, Inc. Powers, Robison. OSullivan, Smith, Schwartzenbach and Kalman time to answer complaint to 4-14-75 and that depositions of certain defts noticed by pltf. for April 3, 4, and 7 1975 are adj. to 4-17, 18, and 21, 1975--Stewart, J.
04-07-75		Filed stip. and order ext. defts. Thyssen-Bornemisza GroupN.V. et al time to answer to-4-28-75. It is further stip. that the deposition of certain defts. by pltf. scheduled for April 17, -21 are adj. to dates established in writtrn notice served upon the atty's for defts at least 10 days in advance of the first set --Stewart, J.
04-18-75		Filed stip. and order ext. detfs time to answer to 6-30-75.—Stewart, J.
04-30-75		Filed defts statement pursuant to rule 9(g), affdvt. and notice of motion for judg dismissing the complaint. ret. 6-12-75.
05-02-75		Filed defts. joint memorandum in support of their motion for dismissal or summary ju
06-02-75		Filed pltf AMENDMENT of complaint
06-04-75		Filed pltfs. affdt. and cross notice of motion for summary judgment and class determinatinn,ret. on: June 19,1975 at 10am in Rm.110.
06-09-75		Filed pltfs. memorandum in support of above motion.
06-09-75		Filed stip. order that deft's motion dated 5-30-75 for judgment dismissing pltf's complaint dated 1-16-75 shall be deemed to apply to pltf's complaint as amended by amendment to the complaint dated 6-3-75 So Ordered-- Stewart, J.
06-25-75		Filed deft. Indian Head, Inc. notice of motion to strike certain affdvts ret. 7-10-
06-26-75		Filed defts Powers, et al. counterstatement pursuant to rule 9(g) and affdvt. of Richard J. Powers.
06-26-75		

WM. Weinberger vs Richard Powers et al

Judge STEWART
75 civ. 229

D. C 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
06-26-75	Filed Joint memorandum on behalf of defts in Reply on their motion for dismissal or summary judgment and in opposition to pltf's motion for summary judgment.
07-07-75	Filed pltf. affdvt. and cross-motion
06-07-75	Filed pltf's Reply memorandum in opposition to deft's motion and in support of pltf's motion
07-14-75	Filed stip. and order that deft. Thyssen-Bornemisza Group N. V. has changed his name to Thyssen-Bornemisza Europe N. V.--Stewart J.
03-10-76	Filed pltf. Weinberger memorandum in support of motion for consolidation and other relief.
03-13-76	Filed pltf. Weinberger affdvt. and notice of motion for an order consolidating the three action pursuant to rule 42(a) ret. 4-1-76
04-05-76	Filed stip. and order that the meeting scheduled for April 5, 1976 in Chambers to report on the progress of settlement negotiations is postponed until April 12, 1976 and that answering papers of pltf. motion seeking consolidation and other relief in ext. to 4-30-76 and the ret. date for said motion is set on 5-6-76--Stewart, J. (plaee in 75civ5755
05-10-76	Filed stip. and order that the time within which to answer or otherwise move to dismiss Weinberger's motion seeking consolidation is ext. to 5-10-76--Stewart, J.
07-7-76	Filed Pltfs. Brucker and D. R. Kamlan affdvt. in support of order certifying class and directing settlement hearing.
07-27-76	Filed pltfs Brucker and Weinberger memorandum in support of pltf's order consenting to by defts, determining the action as a class action and providing for notice and hearing of settlement

EXHIBIT F - SHAMROCK DOCKET SHEET (pp. 757a-759a)

DISTRICT OFFICE	YR.	NUMBER	MO.	DAY	YEAR	J	N/S	O	B	25	S	CLASS	JURY NUMBER	DEM.	VS.
208-1	75	1736	04	09	75	3	850	1		1			0858		75 17

PLAINTIFFS

SHAMROCK CORPORATION, Individually and on behalf of all holders of Warrants of Indian Head, Inc. similarly situated

DEFENDANTS STEWART

INDIAN HEAD, INC., ET AL
~~THYSSEN-BORNEMISZA GROUP N.V.~~
THYSSEN-BORNEMISZA, INC.
WHITE, WELD & CO. INC.
POWERS, RICHARD J.
ROBINSON, JAMES .E.
BACHRACH, HERBERT E.
RUISKAMP, GERARD B.
KATZENBACH, L. EMERY
SMIEI, MARSHALL F.
H.H. THYSSEN-BORNEMISZA
GENILLARD, R.L.
THYSSEN-BORNEMISZA EUROPE N.V. changed above n

rel. to 74-5755

CAUSE

violation of SEC Act of 1934; fraudulent statements impaired value of stock

5lc

ATTORNEYS

Wolf, Haldenstein, Adler, Freeman, Herz & Frank
270 Madison Ave., NYC 10016 689-5300

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID DATE	RECEIPT NUMBER	C.D. NUMBER	STATISTICAL CARDS DATE MAILED
	APR 9 1975	49743		X

UNITED STATES DISTRICT COURT DOCKET

75 Civ.1736 SHAMROCK CORP. ET AL VS INDIAN HEAD INC. ET AL STEWART,

DATE	NR.	PROCEEDINGS
04-09-75	-1-	Filed complaint and issued summons.
04-11-75	-2-	Filed Certificate of mailing complaint and summons by the Clerk by registered mail to Thysseb-Bornemisza Group N.V. #612055 on 4-11-75 (ret. receipt received) Prof. E. M. Meijerallan 1 Amstelveen, The Netherlands Herbert E. Bachrach C/O Thyssen-Bornemisza Group N.V. #612056 on 11-75 Prof. E. M. Meijerallan 1 Amstelveen, The Netherlands Mr. Gerald B. Huiskamp #612057 (ret. receipt received) C/O E. M. Meijerallan 1 Amstelveen, The Netherlands H. H. Thyssen-Bornemisza Villa Favorita Castagnola-Lugano, Switzerland #612058 (ret. receipt received) R. L. Genillard # 612059 c/O Clariden Finanz 1 Quai Du Mont Blanc 1211 Geneva 1, Switzeweland
05-19-75	-3-	Filed stip. and order ext. defts. time to answer the complaint to 7-1-75 and the remaining defts shall have until 7-1-75 or the date provided by law. to answer and that the pltf. shall have until 60 days after date of service by defts for a determination as to whether the action is to be maintained as a class action--- Stewart, J.
05-13-75	-4-	Filed summons with marshal's return served-- White, Weld & Co. by Robert I. Kleinbe on 5-2-75 Emery Katzenbach by Robert I. Kleinberg on 5-2-75 Thyssen-Bornemisza Inc. by H. Blumberg on 4-14-74 Indian Head Inc. by Ralph S. Brown on 4-17-75 Marshal S. Smith by M. Cutter on 4-17-75 James E. Robinson by M. Cutter on 4-17-75 Richard J. Powers by P. Sabatello on 4-17-75
06-03-75	-5-	Filed defts. Thyssen-Bornemisza Group N.V. et al notice of motion for an order dismissing the complaint ret. 6-12-75
06-03-75	-6-	Filed defts. Thyssen-Bornemisza Group N.V. memorandum in support of above motion to dismiss the complaint
06-18-75	-7-	Filed stip. and order that defts. Indian Head, Inc. et al Join defts Thyssen-Bornemisza et al in their motion dated 6-2-75. defts. time time to respond to the complaint is ext. until twenty days following final disposition motion and ret. date of defts motion to rule 9(b) is adj. to 7-3-75 any response by pltf. to motion shall be served by hand on defts.--Stewart, J.
06-27-75	-8-	Filed pltf's memorandum opposing motion by defts to dismiss complaint under rule 9(b)
07-08-75	-9-	Filed Reply memorandum in support of defts motion to dismiss the complaint for failure to allege fraud with particularity as required by rule 9(b)
07-14-75	-10-	Filed stip. and order that deft. Thyssen-Bornemisza Group N.V. has changed his name to Thyssen -Bornemisza Europe N. V. --Stewart, J.
10-09-75	-11-	Filed Memoranduc #43228 Pltf. brought a class action com plaint against defts, Indian Head Inc., et. al. Defts have moved, pursuant to rule 9(b) to dismiss the complaint motion is denied---Stewart, J. m/n
10-29-75	-12-	Filed stip. and order ext. defts time to answer to 11-19-75---Stewart, J.
11-25-75	-13-	Filed stip. and order ext. all defts time to answer the complaint to 12-15-75-- Stewart, J.
12-12-75	-14-	Filed stip. and order that the time of all defts to answer to the complaint is ext. 1-1-76. and pltf's tim to oppose any motion against the complaint is ext. to 60 days after service of motions.--Bonsal, J.
02-02-76	-15-	Filed deft's Thyssen-Bornemisza & Genillard affdvt. and notice of motion for an order dismissing the complaint for lack of personal jurisdiction etc., as indicated. rvt. on March 15, 1976 at time and place to be set by court.

SHAMROCK CORP. ET AL VS. INDIAN HEAD INC. ET AL STEWART,J.

75 Ci.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
02-02-76	-16- Filed defts' memorandum in support of the motion by individual defts' Thyssen-Bornemisza, Genillard and Katzenbach for dismissal for lack of personal jurisdiction or for summary judgment.
02-02-76	-17- Filed defts' joint memorandum in support of defts' motion for dismissal or summary judgment.
02-02-76	-18- Filed defts' affdvt. and notice of motion for judgment pursuant to Rule 12(b) (6), Fed R. Civ. P. dismissing the complaint etc. as indicated. ret. on March 15, 1976 at 10 a.m. rm 2602.
02-02-76	-19- Filed affdvt's of(Powers, Bachrach, Genillard, HtH, Tyssen-Bornemisza & Katzenbach) and exhibits in support of defts' motions for dismissal or summary judgment.
02-02-76	-20- Filed stip. and order ext. defts time to answer to 2-2-76 and that pltfs time to oppose any motions against the complaint to include 60 days after service and filing of any such motions--Stewart, J.
03-04-76	-21- Filed pltf amended complaint
03-03-76	-22- Filed stip. and order ext. the time schedule with respect to the service of opposition and reply papers and the oral argument of defts motion to dismiss pltf's complaint to pltf's papers in opposition to be served---4-15-76 defts reply papers to to be served --4-26-76 and return date of motion to 5-3-76--Stewart, J.
03-18-76	-23- Filed pltf Weinberger memorandum in support of motion for consolidation and other relief.
03-18-76	-24- Filed pltf. Weinberger affdvt. and notice of motion for an order consolida the three action pursuant to rule 42(a) ret. 4-1-76.
03-05-76	Filed stip. and order that the meeting scheduled for April 5, 1976 in Chambers to report on the progress of settlement negotiations is postponed until April 12, 1976 and that answering papers of pltf. mo seeking consolidation and other relief is ext. to 4-20-76 and the re date for said motion is set for 5-[illegible]-76--Stewart, J. (place in 75 Civ
05-19-76	-25- Filed stip. and order ext. defts time to answer to 6-1-76 and that defts Thyssen-Bornemisza Group N.V. time to answer interrog. is eth. to [illegible]--[illegible]
05-17-76	Plltf's memorandum of law in opposition of [illegible] 3-4-76
05-20-76	Filed stip. and order that the time within which the defendants papers to pltf. Weinberger's motion for consolidation to [illegible]--Stewa (place in 75 Civ [illegible])
06-04-76	-26- Filed stip. and order ext. defts. time to answer to [illegible], deft. Thyssen Bornemisza Group N.V. time to answer ext. to [illegible]--Stewart, J.
7-1-76	-27- Filed stip. and order that the time of deft. of Thyssen Bornemisza Group to interrog. is ext. to July 1,1976.So Ordered,Stewart,J.
07-07-76	-28-Filed stip. and order defts time to answer to [illegible]-76--Stewart,J.
07-09-76	-29-Filed stip. and order ext. deft. Thyssen-Bornemisza [illegible] to answer to the interrog. of pltf. to [illegible]-76--Stewart,J.

EXHIBIT G - LIST OF PRINCIPAL DOCUMENTS

(pp. 760a-763a)

THE FOLLOWING EXHIBITS ARE BEING FURNISHED IN SEVEN SEPARATE VOLUMES

VOLUME I	1.	INDIAN HEAD Certificate of 5 1/2% Convertible Subordinated Debenture Due April 15, 1993.
	2.	INDIAN HEAD Warrant Certificate.
	3.	INDIAN HEAD Warrant Agreement dated May 15, 1965.
	4.	INDENTURE dated April 15, 1968 between INDIAN HEAD and MARINE MIDLAND GRACE TRUST COMPANY OF NEW YORK concerning the Convertible Debentures.
	5.	INDIAN HEAD 1968 Prospectuses for Convertible Debentures and Common Stock; and,
	6.	WARRANT PROSPECTUS dated May 20, 1965.
	7.	June 30, 1969 INDIAN HEAD Meeting Transcript.
	8.	New York Stock Exchange Listing Agreement dated May 24, 1966 with reference to Common Stock and Convertible Debentures.
VOLUME II	9.	American Stock Exchange Listing Agreement dated May 24, 1966 with reference to Warrants.
	10.	INDIAN HEAD Directors and Executive Committee Meeting Minutes dated August 1973 - December 1975.
	11.	Notice of INDIAN HEAD 1973 Annual Meeting and Proxy.
	12.	1973 Annual Report of INDIAN HEAD.
	13.	1973 10K filed by INDIAN HEAD.
	14.	Memorandum of Understanding between TDG and INDIAN HEAD dated September 19, 1973.
	15.	Press Release issued September 20, 1973 announcing the Memorandum of Understanding.
	16.	Dow Jones Broad Tape report of the September 20, 1973 Release.
	17.	Articles reporting the information contained in the September 20 Release.
VOLUME III	18.	Press Release issued September 26, 1973 announcing Indian Head Board approval of the Memorandum of Understanding.
	19.	Broad Tape report of the September 26 Release.
	20.	Articles reporting the information contained in the September 26 Release.

	21.	Schedule 13D filed by TBG on September 26, 1973.
	22.	Newspaper advertisement of the first tender offer.
	23.	Articles describing the commencement of the first tender offer.
	24.	Offer to purchase 1.1 million shares of Indian Head Common Stock, dated September 27, 1973.
	25.	Press Release issued October 11, 1973 announcing the acquisition by TBG of 1.8 million shares of INDIAN HEAD Common Stock.
	26.	Broad Tape report of the October 11 Release.
	27.	Articles reporting the information contained in the October 11 Release.
	28.	Two Amendments #1 to Schedule 13D of September 26, 1973 filed by TBG on October 23, 1973 and November 1, 1973.
	29.	Press Release issued October 25, 1973 announcing the election of two TBG executives to INDIAN HEAD's Board.
VOLUME IV		
	30.	Articles reporting the information contained in the October 25 Release.
	31.	Form 8-K for October 1973, filed by INDIAN HEAD.
	32.	INDIAN HEAD 1974 Annual Report.
	33.	1974 Form 10K filed by INDIAN HEAD.
	34.	January 22, 1974 President's Letter from INDIAN HEAD's 1973 Annual Report.
	35.	Articles appearing between the first and second tender offers describing TBG's relationship with INDIAN HEAD.
	36.	Press Release issued July 2, 1974 announcing that TBG was considering a second tender offer.
	37.	Articles reporting the information contained in the July 2 Release.
	38.	Press Release issued July 10, 1974 announcing TBG's intention to proceed with the second tender offer.
	39.	Broad Tape report of the July 10 Release.
VOLUME V	40.	Articles reporting the information contained in the July 10 Release.

	41.	Press Release issued July 12, 1974 announcing the commencement of the second tender offer.
	42.	Broad Tape report of the July 12 Release.
	43.	Newspaper advertisement of the second tender offer.
	44.	Articles describing the commencement of the second tender offer.
	45.	July 12, 1974 Offer to purchase all outstanding INDIAN HEAD Common Stock and Warrants.
	46.	Schedule 13D filed by TBG on July 12, 1974 and four amendments thereto.
	47.	Press Release issued August 2, 1974 announcing the extension of the second tender offer.
	48.	Broad Tape report of the August 2 Release.
	49.	Newspaper advertisement of the extension of the second tender offer.
	50.	Articles reporting the extension of the second tender offer.
VOLUME VI	51.	Press Release issued August 12, 1974 announcing an increase in the offering price for the INDIAN HEAD WARRANTS.
	52.	Articles reporting the information contained in the August 12 Release.
	53.	Copy of pages from Standard & Poor's Daily Stock Price Record, New York Stock Exchange, showing the daily trading volume and prices of INDIAN HEAD Common Stock during September-October 1973 and January-August 1974.
	54.	Table compiled from The Wall Street Journal showing the daily trading volume and prices of the Debentures during September-October 1973 and June-August 1974.
	55.	Table compiled from The Wall Street Journal showing the daily trading volume of the Debentures from January 1, 1974 to August 19, 1974.
	56.	Press Release issued jointly by Indian Head-TBG on August 20, 1974 announcing TBG's ownership of 92% of INDIAN HEAD Common Stock.
	57.	Notice of INDIAN HEAD's 1975 Annual Meeting.
	58.	INDIAN HEAD 1975 Annual Report.

	59.	March 25, 1975 Quarterly Report of INDIAN HEAD.
	60.	Affidavit of Herbert Bachrach dated June 10, 1975 stating $50,000,000 loan was to be used for other acquisitions.
	61.	June 24, 1975 Quarterly Report of INDIAN HEAD.
	62.	December 30, 1975 Quarterly Report of INDIAN HEAD.
VOLUME VII	63.	Press Release issued by TBI on February 11, 1976 concerning proposed Merger.
	64.	Plaintiffs' Proposed Findings of Fact on Motion for Preliminary Injunction.
	65.	Transcript of March 4, 1976 Hearing on Preliminary Injunction before Judge Stewart.
	66.	Press Release issued March 5, 1976 announcing withdrawal of Proposed Merger.
	67.	June 25, 1976 Quarterly Report of INDIAN HEAD.
	68.	Defendants' Statement under Rule 9G.
	69.	Defendants' Counterstatement under Rule 9G.
	70.	Market Prices of Indian Head Securities from September 1, 1974 to February 11, 1976; from February 12, 1976 to March 4, 1976 (the date the Merger Plan was withdrawn); and from March 5, 1976 to July 20, 1976 (the date the settlement was announced.)

EXHIBIT H-1 - OPINION LETTER DATED MAY 7, 1976
(pp. 764a-766a)

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

May 7, 1976

William Klein II, Esq.
Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020

Dear Bill:

I am sending you this letter to confirm to you the reason why I believe that a price of $4 per Warrant for Indian Head Warrants is fair to Warrant holders. Under the terms of Warrants, a holder is entitled to buy one (1) share of Indian Head Common Stock at $30 per share until May 15, 1980, $35 per share until May 15, 1985 and at $40 per share until May 15, 1990 when the Warrants expire.

Based on a cash merger price of $32 for Indian Head Common Stock, the theoretical value of the Warrant is $2 per Warrant, i.e., $32 cash merger price minus $30 Warrant exercise price equals $2 per Warrant. There is a strong argument to be made that a Warrant holder is only entitled to a theoretical price if an event which had always been a possibility, e.g., a merger, occurs. Unlike other security holders such as creditors entitled to interest and a return of principal and common stock holders entitled to dividends when declared and a residual participation in profits, a Warrant holder only becomes entitled to something from an issuing corporation if the Warrant is exercised. A Warrant holder is entitled to nothing tangible, only the opportunity to participate in the stock market on a leveraged basis in the event that the underlying common stock appreciates. Lots of things can happen so that the Warrant holder's opportunity to participate in a stock market play is negated; - the price of the common stock can go down, the company can sell out, or, as is the case here, the company can merge (assuming there is no provable assertion that Indian Head has no legal right to merge with its parent). Put simply, Warrant holders who pay premiums over theoretical values, as do virtually all Warrant buyers, are taking a well-recognized risk that events may occur which reduce or eliminate the premiums over theoretical value at which Warrants sell.

The $4 price might be deemed unfair if one wants to assume that a) an Indian Head merger with its parent is, per se, illegal and provable as illegal in a trial on the merits and/or b) that a $32 cash merger price for Indian Head Common is unconscionably low or unfair. I am not qualified to comment on point a) or on any question of liability in the pertinent lawsuits. However, as to point b), I have, at your direction, been looking at Indian Head Common Stock for some two years now. I think a price of $32 for the Common Stock is well within a range of fairness.

If the value of the Indian Head Warrants were to be gauged solely by the stock market under the assumptions that a) the minimum merger price for Indian Head Common were $32, b) dividends on Indian Head Common were kept small, and c) there was a guaranty to keep exercise of the Warrants a viable option until May 15, 1990, then I would think the Warrants would have a stock market value of 10 - 12. Under those conditions, speculators would pay large premiums over a theoretical value of 2 in order to get a "big bang for a buck," i.e., one could participate in the opportunity for stock market appreciation in Indian Head Common to a greater extent by buying Warrants rather than by buying Common. As a matter of equity, though, it is impossible for me to see why any Warrant holder has an absolute entitlement to a stock market value; when the Warrant holder paid the premium, he took his chances with what had to be full awareness of potential risks as well as potential rewards.

A price of $4 represents a compromise between theoretical values to which a Warrant holder is surely entitled and a stock market price which is more nebulous. If the merger were called off or if defendants prevailed on the merits after trial, the price of $4 per Warrant would seem generous indeed. The average trading price for the Warrants for the thirty trading days prior to the February 11, 1976 merger announcement was $1.79 per Warrant. The proposed settlement compromises the claims of all classes of Indian Head securities holders from the Convertible Debentures on down. I cannot see where the Warrant holders are being treated less well than other classes of security holders. Indeed, I think they are being treated better in light of the strong, though not absolute, claim that can be made that they are entitled in a merger to only the theoretical value of $2 per Warrant, or its equivalent.

William Klein II, Esq. May 7, 1976

I'll be out of town next week except for Friday, May 14th. After that, I'll be out of the country until Tuesday, May 26th. I'd be pleased to discuss my views with you, or any other interested party, in detail when I return.

Warm regards.

Sincerely yours,

Martin J. Whitman

MJW:mh

EXHIBIT H-2 - OPINION LETTER DATED JULY 6, 1976
M. J. Whitman & Co., Inc. (pp. 767a-768a)

115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

July 6, 1976

William Klein II, Esq.
Austrian, Lance & Stewart, P.C.
630 Fifth Avenue
New York, New York 10020

Re: Indian Head

Dear Mr. Klein:

We have been retained by your firm to render investment banking advice and assistance in connection with the above matter. As one part of this engagement, we engaged in a "due diligence" study to ascertain whether there were damages to Indian Head security holders who were given notice of two cash tender offers by Thyssen-Bornemisza Group, N.V. (TBG). The first was dated September 27, 1973 for a maximum of 1,100,000 shares of common stock at $27 per share net and the second, dated July 12, 1974, was for all common stock at $27 per share net and all warrants at $2 per warrant net, then increased to $2.25 per warrant net.

In response to your request for a brief synopsis of our more detailed opinion, this is to advise that we have uncovered nothing to indicate that there were any damages to Indian Head security holders arising out of either Tender Offers, and have concluded that each tender offer was at a fair and reasonable price. In reaching this opinion, we studied various factors we deemed relevant, including:

1. Historic prices for Indian Head, Inc. securities: For example, immediately prior to the first tender offer, the common stock traded at 22 1/2 and during the second and third quarters of 1973, prices ranged between a high of 24 7/8 and a low of 15 1/4.

M. J. Whitman & Co., Inc.
115 BROADWAY
NEW YORK, N. Y. 10006
212 - 349-7555

2. Tender Offer Premium: The Indian Head common stock premium above the then current market, as contrasted with premiums in various other cash tender offers. The Indian Head premium above current market of at least 20% compares favorably with premiums in other comparable tender offers and appears reasonable.

3. Comparison between Indian Head, Inc. securities and those of comparable issuers which are publicly traded as to the comparative financial position, comparative operations and the relationship of stock price to earnings, both current and historic as well as the relationship of price to asset values: Issuers with diversified operations which could be deemed to be equal or better quality than Indian Head, Inc. include Amsted Industries, Continental Can, Eltra Corporation and Stewart Warner. On the basis of these comparisons, the Indian Head tender prices were fair and reasonable, even somewhat on the high side.

4. Value to TBG of control of Indian Head, Inc.: We believe the control values are reflected in the common stock tenders, and in the $2.25 tender for the warrants and do not believe that the common stockholders or warrant holders were damaged by the tender offers.

Sincerely yours,

M. J. WHITMAN & CO., INC.

Martin J. Whitman

Martin J. Whitman, C.F.A.
President

UNITED STATES DISTRICT COURT (pp. 769a-770a)
SOUTHERN DISTRICT OF NEW YORK

- -

EDWARD BRUCKER, et al.,
Plaintiffs,

- against - 74 Civ. 5755 (CES)

THYSSEN-BRONEMISZA EUROPE N.V.
et al.,
Defendants.

- -

WILLIAM B. WEINBERGER,
Plaintiff,

- against - 75 Civ. 229 (CES)

RICHARD J. POWERS et al.,

Defendants.

- -

SHAMROCK CORPORATION et al.,
Plaintiffs,

- against - 75 Civ. 1736 (CES)

INDIAN HEAD INC. et al.,

Defenants.

- -

PLAINTIFFS' ANSWERING AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM KLEIN II, being duly sworn, deposes and says:

The notice of objection of Philadelphia lawyer, Morton Rome is not his first contact with plaintiffs' counsel.

Our motion to enjoin the merger which TBE proposed in its February 11, 1976 announcement, was reported in the Wall Street Journal around February 24, 1976. A few days later Morton Rome telephoned me and I believe he said that

he owned $15,000 of Convertible Debentures. He was enthusiastic about our action and I warmly welcomed his support and advice. I believe that he mentioned some cases that might be helpful.

Thereafter, Morton Rome called me once or possibly twice. He, of course, knew that the merger proposal had been withdrawn and that the defendants had agreed to enter into settlement negotiations with us. He never made any suggestion to me as to his ideas for settlement, nor did he intimate the views on the conversion right expressed in his brief.

The fact that, as a lawyer, he chose to object after the settlement — rather than offer his advice while it might still have been possible to consider it — speaks for itself.

William Klein II

WILLIAM KLEIN II

Sworn to before me this

12 day of October, 1976.

PHILIP D. HUROWITZ
NOTARY PUBLIC, STATE OF NEW YORK
No. 41-4620596
Qualified in Queens County
Term Expires March 30, 19